

**INTERCONNECTION AND/OR RESALE AGREEMENT UNDER
SECTIONS 251 AND 252 OF THE TELECOMMUNICATIONS ACT OF
1996**

between

Wisconsin Bell, Inc. d/b/a SBC Wisconsin

and

24-7 Telcom, Inc

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INTERCONNECTION AND/OR RESALE AGREEMENT UNDER SECTIONS 251 AND 252 OF THE TELECOMMUNICATIONS ACT OF 1996

This Interconnection and/or Resale Agreement under Sections 251 and 252 of the Telecommunications Act of 1996 (**the Agreement**), by and between the SBC Communications Inc. owned ILEC, Wisconsin Bell, Inc. d/b/a SBC Wisconsin, (only to the extent that the agent for each such SBC-owned ILEC executes this Agreement for such SBC-owned ILEC and only to the extent that such SBC-owned ILEC provides Telephone Exchange Services as an ILEC in each of the state(s) listed below) and, 24-7 Telcom, Inc. ("CLEC"), (a Wisconsin corporation), shall apply to the state of Wisconsin

WHEREAS, CLEC represents that it is, or intends to become, a provider of Telephone Exchange Service to residential and business End Users offered exclusively over its own Telephone Exchange Service facilities or predominantly over its own Telephone Exchange Service facilities in combination with the use of Section 251(c)(3) unbundled Network Elements purchased from other entity(ies) and the resale of Telecommunications Services of other carriers.

WHEREAS, the Parties want to Interconnect their networks at mutually agreed upon points of Interconnection to provide Telephone Exchange Services and Exchange Access to residential and business End Users over their respective Telephone Exchange Service facilities in the state of Wisconsin which are subject to this Agreement; and

WHEREAS, the Parties are entering into this Agreement to set forth the respective obligations of the Parties and the terms and conditions under which the Parties will Interconnect their networks and facilities and provide to each other services as required by the Telecommunications Act of 1996 as specifically set forth herein; and

WHEREAS, for purposes of this Agreement, CLEC intends to operate where Wisconsin Bell, Inc. d/b/a SBC Wisconsin is the Incumbent Local Exchange Carrier(s) and CLEC, a Competitive Local Exchange Carrier, has or, prior to the provisioning of any Interconnection, access to Section 251(c)(3) unbundled network elements, Telecommunications Services or any other functions, facilities, products or services hereunder, will have been granted authority to provide certain local Telephone Exchange Services in the foregoing ILEC Service areas by Wisconsin's Public Service Commission;

NOW, THEREFORE, the Parties hereby agree as follows:

This Agreement is composed of General Terms and Conditions, which are set forth below, together with certain Appendices, Attachments, Schedules, Exhibits, FCC Rules and Addenda which immediately follow this Agreement, all of which are hereby incorporated in this Agreement by this reference and constitute a part of this Agreement.

TERMS AND CONDITIONS

1. DEFINITIONS

Capitalized Terms used in this Agreement shall have the respective meanings specified below, in each Appendix attached hereto, and/or as defined elsewhere in this Agreement, or applicable tariffs.

1.1 General Definitions

- 1.1.1 **“Act”** means the Communications Act of 1934 [47 U.S.C. 153], as amended by the Telecommunications Act of 1996, Public Law 104-104, 110 Stat. 56 (1996) codified throughout 47 U.S.C.
- 1.1.2 **“Access Compensation”** is the compensation paid by one Party to the other Party for the origination/termination of intraLATA toll calls to/from its End User. Access compensation is in accordance with the LEC's tariffed access rates.
- 1.1.3 **“Access Service Request” (ASR)** is an industry standard form used by the Parties to add, establish, change or disconnect trunks for the purposes of Interconnection.
- 1.1.4 **“Accessible Letters”** are correspondence used to communicate pertinent information regarding **SBC WISCONSIN** to the client/End User community.
- 1.1.5 **“Advanced Services”** means intrastate or interstate wireline Telecommunications Services, such as ADSL, IDSL, xDSL, Frame Relay, Cell Relay and VPOP-Dial Access Service (an **SBC WISCONSIN** Frame Relay-based service) that rely on packetized technology and have the capability of supporting transmissions speeds of at least 56 kilobits per second in both directions. This definition of Advanced Services does not include:
 - 1.1.5.1 Data services that are not primarily based on packetized technology, such as ISDN,
 - 1.1.5.2 x.25-based and x.75-based packet technologies, or
 - 1.1.5.3 Circuit switched services (such as circuit switched voice grade service) regardless of the technology, protocols or speeds used for the transmission of such services.
- 1.1.6 **“Affiliate”** is As Defined in the Act.
- 1.1.7 **“Alternate Billing Service” (ABS) or “Alternately Billed Traffic” (ABT)** means a service that allows End Users to bill calls to accounts that may not be associated with the originating line. There are three types of ABS calls: calling card, collect and third number billed calls.
- 1.1.8 **“Applicable Law”** means all laws, statutes, common law, regulations, ordinances, codes, rules, guidelines, orders, permits, tariffs and approvals, including those relating to the environment or health and safety, of any Governmental Authority that apply to the Parties or the subject matter of this Agreement.
- 1.1.9 **“As Defined in the Act”** means as specifically defined by the Act.
- 1.1.10 **“As Described in the Act”** means as described in or required by the Act.
- 1.1.11 **“Automated Message Accounting” (AMA)** is a structure inherent in switch technology that initially records Telecommunication message information. AMA format is contained in the Automated Message Accounting document published by Telcordia (formerly known as Bellcore) as GR-1100-CORE, which defines and amends the industry standard for message recording.
- 1.1.12 **“Bona Fide Request” (BFR)** is the process described in the applicable Appendix Section 251(c)(3) UNEs.
- 1.1.13 **“Business Day”** means Monday through Friday, excluding holidays on which **SBC WISCONSIN** does not provision new retail services and products.

- 1.1.14 **“Busy Line Verification” (BLV)** means a service whereby an End User requests an operator to confirm the busy status of a line.
- 1.1.15 **“CABS”** means the Carrier Access Billing System.
- 1.1.16 **“Calling Name Delivery Service” (CNDS)** means a service that enables a terminating End User to identify the calling party by a displayed name before a call is answered. The calling party’s name is retrieved from a Calling Name Database and delivered to the End User’s premise between the first and second ring for display on compatible End User premises equipment.
- 1.1.17 **“Central Automatic Message Accounting (CAMA) Trunk”** means a trunk that uses Multi-Frequency (MF) signaling to transmit calls from CLEC’s switch to an SBC WISCONSIN E911 Selective Router.
- 1.1.18 **“Centralized Message Distribution System” (CMDS)** means the transport system that LECs use to exchange outcollect and Carrier Access Billing System “CABS” access messages among each other and other Parties connected to CMDS.
- 1.1.19 **“Central Office Switch” (Central Office)** is a switching entity within the public switched telecommunications network, including but not limited to:
- 1.1.19.1 **“End Office Switch” or “End Office”** is a switching machine that **directly** terminates traffic to and receives traffic from purchasers of local exchange services. An End Office Switch does not include a PBX.
- 1.1.19.2 **“Tandem Office Switch” or “Tandem(s)”** are used to connect and switch trunk circuits between and among other Central Office Switches. A Tandem Switch does not include a PBX.
- 1.1.20 **“Charge Number”** is a CCS signaling parameter that refers to the number transmitted through the network identifying the billing number of the calling party.
- 1.1.21 **“Claim”** means any pending or threatened claim, action, proceeding or suit.
- 1.1.22 **“Collocation”** is an arrangement where a CLEC leases space at an SBC WISCONSIN premises for the placement of equipment necessary for Interconnection or access to SBC WISCONSIN Section 251(c)(3) UNEs.
- 1.1.23 **“Commercial Mobile Radio Services” (CMRS)** means Commercial Mobile Radio Service, As Defined in the Act and FCC rules.
- 1.1.24 **“Commission”** means the regulatory authority over Telecommunications in the state of Wisconsin. Unless the context otherwise requires, use of the term “Commission” means the Public Service Commission of Wisconsin (PSC-WI).
- 1.1.25 **“Common Channel Signaling” (CCS)** means an out-of-band, packet-switched, signaling network used to transport supervision signals, control signals, and data messages. It is a special network, fully separate from the transmission path of the public switched network. Unless otherwise agreed by the Parties, the CCS protocol used by the Parties shall be SS7.
- 1.1.26 **“Common Language Location Identifier” (CLLI)** codes provide a unique 11-character representation of a network Interconnection point. The first 8 characters identify the city, state and building location, while the last 3 characters identify the network component.
- 1.1.27 **“Consequential Damages”** means Losses claimed to have resulted from any indirect, incidental, reliance, special, consequential, punitive, exemplary, multiple or any other Loss, including damages claimed to have resulted from harm to business, loss of anticipated revenues, savings, or profits, or other economic Loss claimed to have been suffered not measured by the prevailing Party’s actual damages, and regardless of whether the Parties knew or had been advised of the possibility that such damages could result in connection with

or arising from anything said, omitted, or done hereunder or related hereto, including willful acts or omissions.

- 1.128 **“Customer Usage Data”** means the Telecommunications Services usage data of a CLEC End User measured in minutes, sub-minute increments, message units, or otherwise, that is recorded by SBC WISCONSIN and forwarded to CLEC.
- 1.1.29 **“Custom Local Area Signaling Service Features” (CLASS)** means certain call-management service features that are currently available from SBC WISCONSIN's local networks. These could include: Automatic Call Back; Automatic Recall; Call Trace; Caller Identification and related blocking features; Calling Number Delivery; Customer Originated Trace; Distinctive Ringing/Call Waiting; Selective Call Forward; and Selective Call Rejection.
- 1.1.30 **“Customer Name and Address Information” (CNA)** means the name, service address and telephone numbers of a Party's End Users for a particular Exchange Area. CNA includes nonpublished listings, coin telephone information and published listings.
- 1.1.31 **“Data Interexchange Carrier” (DIXC)** is a process designed to facilitate the reciprocal exchange of voice traffic load data between the SBC WISCONSIN and CLECs interconnecting with its network. This reciprocal exchange of data enables SBC WISCONSIN and each CLEC to have a complete view of traffic loads on both ends of two-way trunk groups. The knowledge of call attempt and overflow data counts on both ends of a two-way trunk group enables each company to more accurately estimate the offered, and thereby better estimate, the required quantities of trunks.
- 1.1.32 **“Declassified” or “Declassification”** means the situation where a network element, including a network element referred to as a Section 251(c)(3) UNE under this Agreement, ceases to be a Section 251(c)(3) UNE under this Agreement because it is no longer required by Section 251(c)(3) of the Act, as determined by Section 251(c)(3) and effective FCC rules and associated Section 251(c)(3) and effective FCC and judicial orders. Without limitation, a Section 251(c)(3) UNE that has ceased to be a Section 251(c)(3) UNE may also be referred to as **“Declassified.”**
- 1.1.33 **“Delaying Event”** means any failure of a Party to perform any of its obligations set forth in this Agreement, caused in whole or in part by:
- 1.1.33.1 the failure of the other Party to perform any of its obligations set forth in this Agreement, including but not limited to a Party's failure to provide the other Party with accurate and complete Service Orders;
- 1.1.33.2 any delay, act or failure to act by the other Party or its End User, agent or subcontractor; or
- 1.1.33.3 any Force Majeure Event.
- 1.1.34 **“Dialing Parity”** is As Defined in the Act. As used in this Agreement, Dialing Parity refers to both Local Dialing Parity and Toll Dialing Parity.
- 1.1.35 **“Digital Signal Level”** is one of several transmission rates in the time-division multiplex hierarchy.
- 1.1.35.1 **“Digital Signal Level 0” (DS-0)** is the 64 Kbps zero-level signal in the time-division multiplex hierarchy.
- 1.1.35.2 **“Digital Signal Level 1” (DS-1)** is the 1.544 Mbps first-level signal in the time-division multiplex hierarchy.
- 1.1.35.3 **“Digital Signal Level 3” (DS-3)** is the 44.736 Mbps third-level signal in the time-division multiplex hierarchy.
- 1.1.36 **“Digital Subscriber Line” (DSL)** is as defined in the applicable XDSL and Line Splitting Appendix and/or the applicable tariff, as appropriate.

- 1.1.37 **“Electronic File Transfer”** is any system or process that utilizes an electronic format and protocol to send or receive data files.
- 1.1.38 **“End User(s)”** means a third-party residence or business that subscribes to Telecommunications Services provided by any of the Parties at retail. As used herein, the term “End Users” does not include any of the Parties to this Agreement with respect to any item or service obtained under this Agreement.
- 1.1.39 **“Enhanced Service Provider” (ESP)** is a provider of enhanced services as those services are defined in 47 CFR Section 64.702.
- 1.1.40 **“Exchange Access”** is As Defined in the Act.
- 1.1.41 **“Exchange Area”** means an area, defined by the Commission, for which a distinct local rate schedule is in effect.
- 1.1.42 **“Exchange Message Interface” (EMI)** (formerly Exchange Message Record - EMR) is the standard used for exchange of Telecommunications message information among Telecommunications Carriers for billable, non-billable, sample, settlement and study data. EMI format is contained in Telcordia Practice BR-010-200-010, CRIS Exchange Message Record.
- 1.1.43 **“Exchange Service”** means Telephone Exchange Service, As Defined in the Act.
- 1.1.44 **“Feature Group A” (FGA)** means calls either originated by, or delivered to, an End User who has purchased switched access FGA service from the interstate or intrastate tariffs of either Party. FGA also includes, but is not limited to, FGA-like services provided by either Party, where calls are originated from and/or delivered to numbers which are assigned to a Rate Center within one LATA but where the Party receiving the call is physically located in a LATA different than the LATA of the Party originating the call. The intercarrier compensation mechanism as well as additional definitions for FGA are specified in the applicable **SBC WISCONSIN** tariffs.
- 1.1.45 **“Feature Group D” (FGD)** is access available to all customers, providing trunk side access to a Party's End Office Switches with an associated uniform 101XXXX access code for customer's use in originating and terminating communications.
- 1.1.46 **“FCC”** means the Federal Communications Commission.
- 1.1.47 **“Fiber Meet”** means an Interconnection architecture method whereby the Parties physically Interconnect their networks via an optical fiber interface (as opposed to an electrical interface) at a mutually agreed upon location, at which one Party's responsibility or service begins and the other Party's responsibility ends.
- 1.1.48 **“Foreign Exchange” (FX)** means a service whereby calls either originated by or delivered to a customer who has purchased FX service from the state or interstate tariffs of either Party. FX also includes, but is not limited to, FX-like services provided by either Party where calls are originated from and/or delivered to numbers which are assigned to a Rate Center within one local calling area but where the Party receiving the call is physically located outside of that local calling area. FX service can be either interLATA or intraLATA. InterLATA FX, where the originating and receiving parties are physically located in different LATAs, is considered equivalent to FGA and the intercarrier compensation mechanism is the same as FGA. IntraLATA FX, when provided by two or more local exchange carriers “LECs”, is considered a jointly provided service and meet-point billed by those providing it utilizing a mutually agreed to meet-point billing, or meet-point billing like procedure.
- 1.1.49 **“Fraud Monitoring System”** means an off-line administration system that monitors suspected occurrences of ABT-related fraud.

- 1.1.50 **“Governmental Authority”** means any federal, state, local, foreign, or international court, government, department, commission, board, bureau, agency, official, or other regulatory, administrative, legislative, or judicial authority with jurisdiction over the subject matter at issue.
- 1.1.51 **“Incumbent Local Exchange Carrier” (ILEC)** is As Defined in the Act.
- 1.1.52 **“Intellectual Property”** means copyrights, patents, trademarks, trade secrets, mask works and all other intellectual property rights.
- 1.1.53 **“Integrated Digital Loop Carrier”** means a subscriber loop carrier system that is twenty-four (24) local Loop transmission paths combined into a 1.544 Mbps digital signal which integrates within the switch at a DS1 level.
- 1.1.54 **“Integrated Services Digital Network” (ISDN)** means a switched network service that provides end-to-end digital connectivity for the simultaneous transmission of voice and data. Basic Rate Interface-ISDN (BRI-ISDN) provides for a digital transmission of two 64 Kbps bearer channels and one 16 Kbps data channel (2B+D).
- 1.1.55 **“Interconnection”** is As Defined in the Act.
- 1.1.56 **“Interconnection Activation Date”** is the date that the construction of the joint facility Interconnection arrangement has been completed, trunk groups have been established, joint trunk testing is completed and trunks have been mutually accepted by the Parties.
- 1.1.57 **“Interexchange Carrier” (IXC)** means a carrier that provides, directly or indirectly, interLATA or intraLATA Telephone Toll Services.
- 1.1.58 **“InterLATA”** is As Defined in the Act.
- 1.1.59 **“Intermediate Distribution Frame” (IDF)** is a second frame that augments an existing Main Distribution Frame. Lines or outside cables do not terminate on the IDF.
- 1.1.60 **“Internet Service Provider” (ISP)** is an Enhanced Service Provider that provides Internet Services, and is defined in paragraph 341 of the FCC’s First Report and Order in CC Docket No. 97-158.
- 1.1.61 **“IntraLATA Toll Traffic”** means the IntraLATA traffic between two locations within one LATA where one of the locations lies outside of the normal local calling area as defined by the applicable Commission.
- 1.1.62 **“Jurisdictional Identification Parameter” (JIP)** is an existing six (6) digit (NPA-NXX) field in the SS7 message. This field designates the first point of switching.
- 1.1.63 **Intentionally Left Blank**
- 1.1.64 **“Line Information Data Base” (LIDB)** means a transaction-oriented database system that functions as a centralized repository for data storage and retrieval. LIDB is accessible through CCS networks. LIDB contains records associated with End User line numbers and special billing numbers.
- 1.1.65 **“Local Access Transport Area” (LATA)** is As Defined in the Act.
- 1.1.66 **“Local Exchange Carrier” (LEC)** is As Defined in the Act.
- 1.1.67 **“Local Exchange Routing Guide” (LERG)** is a Telcordia Reference document used by Telecommunications Carriers to identify NPA-NXX routing and homing information as well as Network element and equipment designations.
- 1.1.68 **“Local Calls”**, for purposes of Intercarrier Compensation, is traffic where all calls are within the same common local and common mandatory local calling area, i.e., within the same or different SBC Exchange(s) that participate in the same common local mandatory local calling area approved by the applicable state Commission. Local Calls must actually originate and actually terminate to parties physically located within the same common local or common mandatory local calling area.

- 1.1.69 **“Local Interconnection Trunks/Trunk Groups”** are used for the termination of Section 251(b)(5) Traffic, pursuant to Telcordia Technical Reference GR-317-CORE.
- 1.1.70 **“Local Loop Transmission”, “Section 251(c)(3) Unbundled Local Loop”, “Loop”** means the transmission path which extends from the Network Interface Device or demarcation point at an End User’s premise to the Main Distribution Frame or other designated frame or panel in the **SBC WISCONSIN** serving Wire Center.
- 1.1.71 **“Local Number Portability” (LNP)** means the ability of users of Telecommunications Services to retain, at the same location, the presence of a previously existing telephone number(s).
- 1.1.72 **“Location Routing Number” (LRN)** is a ten (10) digit number that is assigned to the network switching elements (Central Office – Host and Remotes as required) for the routing of calls in the network. The first six (6) digits of the LRN will be one of the assigned NPA NXX of the switching element. The purpose and functionality of the last four (4) digits of the LRN have not yet been defined but are passed across the network to the terminating switch.
- 1.1.73 **“Local Service Provider” (LSP)** is the LEC that provides retail local Exchange Service to an End User. The LSP may or may not provide any physical network components to support the provision of that End User’s service.
- 1.1.74 **“Loss” or “Losses”** means any and all losses, costs (including court costs), claims, damages (including fines, penalties, and criminal or civil judgments and settlements), injuries, liabilities and expenses (including attorneys’ fees).
- 1.1.75 **“MECAB”** refers to the Multiple Exchange Carrier Access Billing document prepared by the Billing Committee of the Ordering and Billing Forum “OBF”, which functions under the auspices of the Carrier Liaison Committee “CLC of the Alliance for Telecommunications Industry Solutions “ATIS”. The MECAB document, published by ATIS as ATIS/OBF- MECAB- Issue 6, February 1998, contains the recommended guidelines for the billing of access services provided to an IXC by two or more LECs, or by one LEC in two or more states within a single LATA.
- 1.1.76 **“MECOD”** refers to the Multiple Exchange Carriers Ordering and Design Guidelines for Access Services - Industry Support Interface, a document developed by the Ordering/Provisioning Committee of the OBF, which functions under the auspices of the CLC of ATIS. The MECOD document, published by ATIS as ATIS/OBF- MECAB- Issue 3, February 1993, establishes methods for processing orders for access service which is to be provided to an IXC by two or more telecommunications providers.
- 1.1.77 **“Meet-Point Billing” (MPB)** refers to the billing associated with Interconnection of facilities between two or more LECs for the routing of traffic to and from an IXC with which one of the LECs does not have a direct connection. In a multi-bill environment, each Party bills the appropriate tariffed rate for its portion of a jointly provided Switched Exchange Access Service.
- 1.1.78 **“Multiple Bill/Single Tariff”** is a billing method used when Switched Exchange Access Services is jointly provided by the Parties. As described in the MECAB document, each Party will render a bill in accordance with its own tariff for that portion of the service it provides. Each Party will bill its own network access service rates.
- 1.1.79 **“Mutual Compensation”** as defined in Appendix Intercarrier Compensation.
- 1.1.80 **“Network Data Mover” (NDM)** is an industry standard protocol for transferring information electrically.
- 1.1.81 **“Network Element”** is As Defined in the Act.
- 1.1.82 **“North American Numbering Plan” (NANP)** A numbering architecture in which every station in the NANP Area is identified by a unique ten-digit address consisting of a three-digit NPA

code, a three digit central office code of the form NXX, and a four-digit line number of the form XXXX.

- 1.1.83 **“Numbering Plan Area” (NPA)** also called area code. An NPA is the 3-digit code that occupies the A, B, C positions in the 10-digit NANP format that applies throughout the NANP Area. NPAs are of the form NXX, where N represents the digits 2-9 and X represents any digit 0-9. In the NANP, NPAs are classified as either geographic or non-geographic. a) Geographic NPAs are NPAs which correspond to discrete geographic areas within the NANP Area. b) Non-geographic NPAs are NPAs that do not correspond to discrete geographic areas, but which are instead assigned for services with attributes, functionalities, or requirements that transcend specific geographic boundaries. The common examples are NPAs in the N00 format, e.g., 800.
- 1.1.84 **“Number Portability”** is As Defined in the Act.
- 1.1.85 **“NXX” or “Central Office Code”** is the three-digit switch entity indicator that is defined by the fourth through sixth digits of a 10-digit telephone number within the NANP. Each NXX Code contains 10,000 station numbers.
- 1.1.86 **“Ordering and Billing Forum” (OBF)** is a forum comprised of local telephone companies and inter-exchange carriers whose responsibility is to create and document Telecommunication industry guidelines and standards.
- 1.1.87 **“Out of Exchange LEC” (OE-LEC)** means CLEC operating within SBC WISCONSIN's incumbent local exchange area and provides Telecommunications services utilizing NPA-NXXs identified to reside in a Third Party Incumbent LEC's local exchange area.
- 1.1.88 **“Out of Exchange Traffic”** is defined as local, transit, or intraLATA traffic to or from a non-SBC Wisconsin exchange area.
- 1.1.89 **“Party”** means either CLEC or the SBC-owned ILEC; use of the term “Party” includes each of the SBC-owned ILEC(s) that is a party to this Agreement. **“Parties”** means both CLEC and the SBC-owned ILEC; use of the term “Parties” includes each of the SBC-owned ILEC(s) that is a party to this Agreement.
- 1.1.90 **“Permanent Number Portability” (PNP)** is a long term method of providing LNP using LRN.
- 1.1.91 **“Person”** means an individual or a partnership, an association, a joint venture, a corporation, a business or a trust or other entity organized under Applicable Law, an unincorporated organization or any Governmental Authority.
- 1.1.92 **“Physical Collocation”** is as defined in Appendix Physical Collocation.
- 1.1.93 **“Plain Old Telephone Service” (POTS)** means telephone service for the transmission of human speech.
- 1.1.94 **“Point of Interconnection” (POI)** is a physical location at which the Parties' networks meet for the purpose of establishing Interconnection. POIs include a number of different technologies and technical interfaces based on the Parties' mutual agreement.
- 1.1.95 **“Port”** is the point of interface/access connection to the SBC WISCONSIN public switched network. This may be a switch line side interface or switch trunk side interface.
- 1.1.96 **“Rate Center Area”** means the following in each applicable area:
- 1.1.96.1 SBC WISCONSIN
- 1.1.96.1.1 **“Rate Center”** means the specific geographic point that has been designated by a given LEC as being associated with a particular NPA-NXX code that has been assigned to the LEC for its provision of Telephone Exchange Service. The Rate Center is the finite geographic point identified by a specific V&H coordinate, which is used by that LEC to measure, for billing purposes, distance sensitive transmission services associated with the specific Rate Center.

- 1.1.97 **“Rating Point”** means the V&H coordinates associated with a particular telephone number for rating purposes.
- 1.1.98 **“Referral Announcement”** refers to a process by which calls are routed to an announcement that states the new telephone number of an End User.
- 1.1.99 **“Routing Point”** is a location which a LEC has designated on its own network as the homing or routing point for traffic inbound to Exchange Service provided by the LEC which bears a certain NPA-NXX designation. The Routing Point is employed to calculate mileage measurements for the distance-sensitive transport element charges of Switched Access services. The Routing Point need not be the same as the Rating Point, nor must it be located within the Rate Center area, but must be in the same LATA as the NPA-NXX.
- 1.1.100 **“SBC Communications Inc.” (SBC)** means the holding company which directly or indirectly owns Wisconsin Bell, Inc. d/b/a SBC Wisconsin.
- 1.1.101 **“SBC WISCONSIN”** - As used herein, **SBC WISCONSIN** means Wisconsin Bell, Inc. d/b/a SBC Wisconsin, the applicable SBC-owned ILEC doing business in Wisconsin.
- 1.1.102 **“Section 251(c)(3),”** when used in relation to unbundling, unbundled network elements, Network Elements and/or activities involving UNEs that **SBC WISCONSIN** is required to provide pursuant to Section 251(c)(3) of the Act, as determined by effective FCC rules and judicial orders.
- 1.1.103 **“Service Provider Number Portability” (SPNP)** is synonymous with Permanent Number Portability “PNP”.
- 1.1.104 **“Service Switching Point” (SSP)** is a telephone Central Office Switch equipped with a Signaling System 7 (SS7) interface.
- 1.1.105 **“Signaling System 7” (SS7)** means a signaling protocol used by the CCS Network.
- 1.1.106 **“Signal Transfer Point” (STP)** performs a packet switching function that routes signaling messages among Service Switching Points (**SSP**), Service Control Points (**SCP**), Signaling Points (**SP**), and other STPs in order to set up calls and to query databases for Advanced Services.
- 1.1.107 **“State Abbreviation” “WI”** means Wisconsin
- 1.1.108 **“Switched Access Detail Usage Data”** means a category 1101xx record as defined in the EMI Telecordia Practice BR 010-200-010.
- 1.1.109 **“Switched Exchange Access Service”** means the offering of transmission or switching services to Telecommunications Carriers for the purpose of the origination or termination of telephone toll service. Switched Exchange Access Services include: Feature Group A, Feature Group B, Feature Group D, 800/888 access, and 900 access and their successors or similar Switched Exchange Access Services.
- 1.1.110 **“Synchronous Optical Network” (SONET)** is an optical interface standard that allows inter-networking of transmission products from multiple vendors. The base rate is 51.84 Mbps (“OC-1/STS-1”) and higher rates are direct multiples of the base rate, up to 13.22 Gbps.
- 1.1.111 **“Telecommunications”** is As Defined in the Act.
- 1.1.112 **“Telecommunications Carrier”** is As Defined in the Act.
- 1.1.113 **“Telecommunications Service”** is As Defined in the Act.
- 1.1.114 **“Telephone Exchange Service”** is As Defined in the Act.
- 1.1.115 **“Telephone Toll Service”** is As Defined in the Act.
- 1.1.116 **“Third Party”** means any Person other than a Party.

1.1.117 **“Toll Billing Exception Service” (TBE)** means a service that allows End Users to restrict third number billing or collect calls to their lines.

1.1.118 **“Trunk”** means a communication line between two switching systems.

1.1.119 **“Trunk-Side”** refers to a Central Office Switch connection that is capable of, and has been programmed to treat the circuit as connecting to another switching entity (for example another Central Office switch). Trunk-Side connections offer those transmission and signaling features appropriate for the connection of switching entities and cannot be used for the direct connection of ordinary telephone station sets.

1.1.120 **“Section 251(c)(3) Unbundled Network Element” or “Section 251(c)(3) UNE”** is as defined in Appendix Section 251(c)(3) UNEs (Section 251(c)(3) Provision of Access to Unbundled Network Elements).

1.1.121 **“Virtual Collocation”** is as defined in Appendix Virtual Collocation.

1.1.122 **“Wire Center”** is the location of one or more local switching systems. A point at which End User’s loops within a defined geographic area converge. Such local loops may be served by one (1) or more Central Office Switches within such premises.

1.2 Definitions Applicable to **SBC WISCONSIN** only

1.2.1 **“Main Distribution Frame” (MDF)** is termination frame for outside facility and inter-exchange office equipment at the central office for DS-0 and DSL services.

1.2.2 **“Serving Wire Center” (SWC)** means a Wire Center that serves the area in which the other Party’s or a third party’s Wire Center, aggregation point, point of termination, or point of presence is located.

1.2.3 **“Universal Digital Loop Carrier” (UDLC)** describes a DLC system that has a Central Office terminal channel bank that is connected to the CO switches on the analog side.

1.2.4 **“Line Side”** refers to the switch port toward the CLEC’s side of the equipment.

2. **INTERPRETATION, CONSTRUCTION AND SEVERABILITY**

2.1 Definitions

2.1.1 For purposes of this Agreement, certain terms have been defined in this Agreement to encompass meanings that may differ from, or be in addition to, the normal connotation of the defined word. Unless the context clearly indicates otherwise, any term defined or used in the singular will include the plural. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation” and/or “but not limited to”. The words “will” and “shall” are used interchangeably throughout this Agreement and the use of either connotes a mandatory requirement. The use of one or the other will not mean a different degree of right or obligation for either Party. A defined word intended to convey its special meaning is capitalized when used. Other terms that are capitalized and not defined in this Agreement will have the meaning in the Act, or in the absence of their inclusion in the Act, the applicable tariff, and/or their customary usage in the Telecommunications industry as of the Effective Date.

2.2 Headings Not Controlling

2.2.1 The headings and numbering of Sections, Parts, Appendices Schedules and Exhibits to this Agreement are for convenience only and shall not be construed to define or limit any of the terms herein or affect the meaning or interpretation of this Agreement.

2.2.2 This Agreement incorporates a number of Appendices which, together with their associated Attachments, Exhibits, Schedules and Addenda, constitute the entire Agreement between the Parties. In order to facilitate use and comprehension of the Agreement, the Appendices have

been grouped under broad headings. It is understood that these groupings are for convenience of reference only, and are not intended to limit the applicability that any particular appendix, attachment, exhibit, schedule or addenda may otherwise have.

2.3 Referenced Documents

2.3.1 Unless the context shall otherwise specifically require, and subject to Section 21, whenever any provision of this Agreement refers to a technical reference, technical publication, CLEC Practice, **SBC WISCONSIN** Practice, any publication of telecommunications industry administrative or technical standards, or any other document specifically incorporated into this Agreement (collectively, a “**Referenced Instrument**”), it will be deemed to be a reference to the then-current version or edition (including any amendments, supplements, addenda, or successors) of each Referenced Instrument that is in effect, and will include the then-current version or edition (including any amendments, supplements, addenda, or successors) of any other Referenced Instrument incorporated by reference therein.

2.4 References

2.4.1 References herein to Sections, Paragraphs, Exhibits, Parts, Schedules, and Appendices shall be deemed to be references to Sections, Paragraphs and Parts of, and Exhibits, Schedules and Appendices to, this Agreement unless the context shall otherwise require.

2.5 Tariff References

2.5.1 To the extent a tariff provision or rate is incorporated or otherwise applies between the Parties due to the provisions of this Agreement, it is understood that said tariff provision or rate applies only in the jurisdiction in which such tariff provision or rate is filed, and applies to the CLEC and only **SBC WISCONSIN** that operates within that jurisdiction. Further, it is understood that any changes to said tariff provision or rate are also automatically incorporated herein or otherwise hereunder, effective hereunder on the date any such change is effective.

2.5.2 Any Public Service Commission of Wisconsin ordered tariff provision or rate that is incorporated, cited or quoted herein, it is understood that said incorporation or reference applies only to the entity within the state Of Wisconsin.

2.6 Conflict in Provisions

2.6.1 In the event of a conflict between the provisions of this Agreement and the Act, the provisions of the Act shall govern.

2.6.2 If any definitions, terms or conditions in any given Appendix, Attachment, Exhibit, Schedule or Addenda differ from those contained in the main body of this Agreement, those definitions, terms or conditions will supersede those contained in the main body of this Agreement, but only in regard to the services or activities listed in that particular Appendix, Attachment, Exhibit, Schedule or Addenda. In particular, if an Appendix contains a Term length that differs from the Term length in the main body of this Agreement, the Term length of that Appendix will control the length of time that services or activities are to occur under that Appendix, but will not affect the Term length of the remainder of this Agreement.

2.7 Joint Work Product

2.7.1 This Agreement is the joint work product of the Parties and has been negotiated by the Parties and their respective counsel and shall be fairly interpreted in accordance with its terms and, in the event of any ambiguities, no inferences shall be drawn against either Party.

2.8 Severability

2.8.1 If any provision of this Agreement is rejected or held to be illegal, invalid or unenforceable, each Party agrees that such provision shall be enforced to the maximum extent permissible so as to effect the intent of the Parties, and the validity, legality and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby. If necessary

to effect the intent of the Parties, the Parties shall negotiate in good faith to amend this Agreement to replace the unenforceable language with enforceable language that reflects such intent as closely as possible. The Parties negotiated the terms and conditions of this Agreement for Interconnection, services and Section 251(c)(3) Unbundled Network Elements as a total arrangement and it is intended to be nonseverable.

2.9 Incorporation by Reference

2.9.1 All of the rates, terms and conditions ("Provisions") set forth in this Agreement (including any and all Attachments, Appendices and/or schedules hereto) and every Interconnection, service and Network Element provided hereunder, are subject to all other Provisions contained in this Agreement (including any and all Attachments, Appendices and/or schedules hereto), and all such Provisions are integrally related.

2.10 Non-Voluntary Provisions

2.10.1 This Agreement incorporates certain rates, terms and conditions that were not voluntarily negotiated by SBC WISCONSIN, but instead resulted from determinations made in arbitrations under Section 252 of the Act or from other requirements of regulatory agencies or state law (individually and collectively, a "Non-Voluntary Arrangement"). SBC WISCONSIN has identified some, but not all, of the Non-Voluntary Arrangements contained in this Agreement, by designating such provisions with asterisks. If any Non-Voluntary Arrangement is modified as a result of any order or finding by the FCC, the appropriate Commission or a court of competent jurisdiction, any Party may, by providing written notice to the other Party, require that any affected Non-Voluntary Arrangement (and any related rates, terms and conditions) be deleted or renegotiated, as applicable, in good faith and this Agreement amended accordingly. If such modifications to this Agreement are not executed within sixty (60) calendar days after the date of such notice, a Party may pursue its rights under Section 10.

2.10.2 The Parties acknowledge that the Non-Voluntary Arrangements contained in this Agreement shall not be available in any state other than the state that originally imposed/required such Non-Voluntary Arrangement. By way of example only, the Parties acknowledge that the PUC-OH's imposition in Ohio of the Minimum Telephone Service Standards (and all terms and conditions relating thereto) shall not apply in or be "portable to" any state other than Ohio.

2.11 State-Specific Rates, Terms and Conditions

2.11.1 For ease of administration, this SBC WISCONSIN Agreement contains certain specified rates, terms and conditions which apply only in Wisconsin ("**state-specific terms**"). This Agreement contains specified rates, terms and conditions which apply only Wisconsin, such rates, terms and conditions shall not apply and shall have no effect in any other state(s).

2.11.2 State-specific terms, as the phrase is described in Section 2.11.1 above, have been negotiated (or in the case of 2.10.2 above, included in the agreement per state requirement) by the Parties only as to the states where this Agreement has been executed, filed and approved. When the Parties negotiate an agreement for an additional state, neither Party shall be precluded by any language in this Agreement from negotiating state-specific terms for the state in which are to apply.

2.11.3 **Successor Rates.** Certain of the rates, prices and charges set forth in the applicable Appendix Pricing have been established by the Wisconsin Public Service Commission in cost proceedings or dockets initiated under or pursuant to the Act. If during the Term that Commission or the FCC changes a rate, price or charge in an order or docket that applies to any of the Interconnection, Resale Services, Network Elements, functions, facilities, products and services available hereunder, the Parties agree to amend this Agreement to incorporate such new rates, prices and charges, with such rates, prices and charges to be effective as of the date specified in such order or docket (including giving effect to any retroactive application, if so ordered). If either Party

refuses to execute an amendment to this Agreement within sixty (60) calendar days after the date of such order or docket, the other Party may pursue its rights under Section 10.

2.12 Scope of Obligations

2.12.1 Notwithstanding anything to the contrary contained herein except for the Out of Exchange Appendix, SBC WISCONSIN's obligations under this Agreement shall apply only to:

2.12.1.1 the specific operating area(s) or portion thereof in which SBC WISCONSIN is then deemed to be the ILEC under the Act (**the "ILEC Territory"**), and only to the extent that the CLEC is operating and offering service to End Users identified to be residing in such ILEC Territory; and

2.12.1.2 assets that SBC WISCONSIN owns or leases and which are used in connection with SBC WISCONSIN's provision to CLEC of any Interconnection, Resale Services, Section 251(c)(3) Unbundled Network Elements, functions, facilities, products or services provided or contemplated under this Agreement, the Act or any tariff or ancillary agreement referenced herein (individually and collectively, the **"ILEC Assets"**).

2.12.1.3 The underlying Interconnection Agreement sets forth the terms and conditions pursuant to which SBC WISCONSIN agrees to provide CLEC with access to Section 251(c)(3) unbundled Network Elements under Section 251(c)(3) of the Act, Collocation under Section 251(c)(6) of the Act, Interconnection under Section 251(c)(2) of the Act and/or Resale under Section 251(c)(4) of the Act in SBC WISCONSIN's incumbent local exchange areas for the provision of CLEC's Telecommunications Services. The Parties acknowledge and agree that SBC WISCONSIN is only obligated to make available Section 251(c)(3) UNEs and access to Section 251(c)(3) UNEs under Section 251(c)(3) of the Act, Collocation under Section 251(c)(6) of the Act, Interconnection under Section 251(c)(2) of the Act and/or Resale under Section 251(c)(4) of the Act to CLEC in SBC WISCONSIN's incumbent local exchange areas. SBC WISCONSIN has no obligation to provide such Section 251(c)(3) UNEs, Collocation, Interconnection and/or Resale, to CLEC for the purposes of CLEC providing and/or extending service outside of SBC WISCONSIN's incumbent local exchange areas. In addition, SBC WISCONSIN is not obligated to provision Section 251(c)(3) UNEs or to provide access to Section 251(c)(3) UNEs under Section 251(c)(3) of the Act, Collocation under Section 251(c)(6) of the Act, Interconnection under Section 251(c)(2) of the Act and/or Resale under Section 251(c)(4) of the Act and is not otherwise bound by any 251(c) obligations in geographic areas other than SBC WISCONSIN's incumbent local exchange areas. Therefore, the Parties understand and agree that the rates, terms and conditions set forth in SBC WISCONSIN's current Interconnection Agreement, and any associated provisions set forth elsewhere in CLEC's current Interconnection Agreement (including but not limited to the rates set forth in this Agreement associated with Section 251(c)(3) UNEs under Section 251(c)(3) of the Act, Collocation under Section 251(c)(6) of the Act, Interconnection under Section 251(c)(2) of the Act and/or Resale under Section 251(c)(4) of the Act), shall only apply to the Parties and be available to CLEC for provisioning Telecommunication Services within an SBC WISCONSIN incumbent local exchange area(s) in the State in which CLEC's current Interconnection Agreement with SBC WISCONSIN has been approved by the relevant state Commission and is in effect.

2.12.1.4 Throughout this Agreement, wherever there are references to unbundled network elements that are to be provided by SBC WISCONSIN under this Agreement, the Parties agree and acknowledge that their intent is for the Agreement to comply with Section 2.12.1.3, above, and require only the provision of Section 251(c)(3) UNEs,

regardless of whether the term "Section 251(c)(3)" is used as part of the reference to unbundled network elements.

2.13 Affiliates

2.13.1 These General Terms and Conditions and all attachments and Appendices hereto (this Agreement), including subsequent amendments, if any, shall bind SBC WISCONSIN, CLEC and any entity that currently or subsequently is owned or controlled by or under common ownership or control with CLEC. CLEC further agrees that the same or substantially the same terms and conditions shall be incorporated into any separate agreement between SBC WISCONSIN and any such CLEC Affiliate that continues to operate as a separate entity. This Agreement shall remain effective as to CLEC and any such CLEC Affiliate for the term of this Agreement as stated herein until either SBC WISCONSIN or CLEC or any such CLEC Affiliate institutes renegotiation consistent with the provisions of this Agreement for renewal and term. Notwithstanding the foregoing, this Agreement will not supercede a currently effective interconnection agreement between any such CLEC Affiliate and SBC WISCONSIN until the expiration of such other agreement.

3. **NOTICE OF CHANGES -- SECTION 251(c)(5)**

3.1 Nothing in this Agreement shall limit either Party's ability to upgrade its network through the incorporation of new equipment, new software or otherwise. Each Party agrees to comply with the Network Disclosure rules adopted by the FCC in CC Docket No. 96-98, Second Report and Order, codified at 47 C.F.R. 51.325 through 51.335, as such rules may be amended from time to time (the "Network Disclosure Rules").

4. **GENERAL RESPONSIBILITIES OF THE PARTIES**

4.1 Upon approval by the Public Service Commission of Wisconsin, CLEC agrees to begin providing Telephone Exchange Service within its certificated service area to business End Users within 30 calendar days and to residential End Users within 30 calendar days.

4.2 SBC WISCONSIN and CLEC shall each use their best efforts to meet the Interconnection Activation Dates.

4.3 Each Party is individually responsible to provide facilities within its network that are necessary for routing, transporting, measuring, and billing traffic from the other Party's network and for delivering such traffic to the other Party's network in the standard format compatible with SBC WISCONSIN's network as referenced in Telcordia BOC Notes on LEC Networks Practice No. SR-TSV-002275, and to terminate the traffic it receives in that standard format to the proper address on its network. The Parties are each solely responsible for participation in and compliance with national network plans, including the National Network Security Plan and the Emergency Preparedness Plan.

4.4 The Parties shall exchange technical descriptions and forecasts of their Interconnection and traffic requirements in sufficient detail necessary to establish the Interconnections required to assure traffic completion to and from all End Users in their respective designated service areas.

4.5 Each Party is solely responsible for all products and services it provides to its End Users and to other Telecommunications Carriers.

4.6 At all times during the term of this Agreement, each Party shall keep and maintain in force at its own expense the following minimum insurance coverage and limits and any additional insurance and/or bonds required by Applicable Law:

4.6.1 Workers' Compensation insurance with benefits afforded under the laws of each state covered by this Agreement and Employers Liability insurance with minimum limits of \$100,000 for Bodily Injury-each accident, \$500,000 for Bodily Injury by disease-policy limits and \$100,000 for Bodily Injury by disease-each employee.

- 4.6.2 Commercial General Liability insurance with minimum limits of: \$10,000,000 General Aggregate limit; \$5,000,000 each occurrence sub-limit for all bodily injury or property damage incurred in any one occurrence; \$1,000,000 each occurrence sub-limit for Personal Injury and Advertising; \$10,000,000 Products/Completed Operations Aggregate limit, with a \$5,000,000 each occurrence sub-limit for Products/Completed Operations. Fire Legal Liability sub-limits of \$2,000,000 are also required if this Agreement involves Collocation. The other Party must be named as an Additional Insured on the Commercial General Liability policy.
- 4.6.3 If use of an automobile is required, Automobile Liability insurance with minimum limits of \$1,000,000 combined single limits per occurrence for bodily injury and property damage, which coverage shall extend to all owned, hired and non-owned vehicles.
- 4.6.4 Each Party shall require subcontractors providing services under this Agreement to maintain in force the insurance coverage as set forth in Section 4.6
- 4.6.5 The Parties agree that companies affording the insurance coverage required under Section 4.6 shall have a rating of B+ or better and a Financial Size Category rating of VII or better, as rated in the A.M. Best Key Rating Guide for Property and Casualty Insurance Companies. Upon request from the other Party, each Party shall provide to the other Party evidence of such insurance coverage.
- 4.6.6 Each Party agrees to provide the other Party with at least thirty (30) calendar days advance written notice of cancellation, material reduction or non-renewal of any of the insurance policies required herein.
- 4.6.7 Each Party agrees to accept the other Party's program of self-insurance in lieu of insurance coverage if certain requirements are met. These requirements are as follows:
- 4.6.7.1 The Party desiring to satisfy its Workers' Compensation and Employers Liability obligations through self-insurance shall submit to the other Party a copy of its Certificate of Authority to Self-Insure its Workers' Compensation obligations issued by each state covered by this Agreement or the employer's state of hire; and
- 4.6.7.2 The Party desiring to satisfy its automobile liability obligations through self-insurance shall submit to the other Party a copy of the state-issued letter approving self-insurance for automobile liability issued by each state covered by this Agreement; and
- 4.6.7.3 The Party desiring to satisfy its general liability obligations through self-insurance must provide evidence acceptable to the other Party that it maintains at least an investment grade (e.g., B+ or higher) debt or credit rating as determined by a nationally recognized debt or credit rating agency such as Moody's, Standard and Poor's or Duff and Phelps.
- 4.6.8 This Section 4.6 is a general statement of insurance requirements and shall be in addition to any specific requirement of insurance referenced elsewhere in this Agreement or a Referenced Instrument.
- 4.7 Simultaneously with CLEC's execution of this Agreement, CLEC shall insert the appropriate state-specific authorized and nationally recognized OCN/AECNs for facilities-based (Interconnection and/or Section 251(c)(3) Unbundled Network Elements) and a separate and distinct OCN/AECN for Resale Services on the signature page of this Agreement and provide SBC WISCONSIN with a copy.
- 4.8 Assignment
- 4.8.1 Assignment of Contract
- 4.8.1.1 CLEC may not assign or transfer this Agreement or any rights or obligations hereunder, whether by operation of law or otherwise, to a non-affiliated third party without the prior written consent of SBC WISCONSIN. Any attempted assignment or transfer that is not permitted is void *ab initio*.

- 4.8.1.2 CLEC may assign or transfer this Agreement and all rights and obligations hereunder, whether by operation of law or otherwise, to its Affiliate by providing sixty (60) calendar days' advance written notice of such assignment or transfer to **SBC WISCONSIN**; provided that such assignment or transfer is not inconsistent with Applicable Law (including the Affiliate's obligation to obtain and maintain proper Commission certification and approvals) or the terms and conditions of this Agreement. Notwithstanding the foregoing, CLEC may not assign or transfer this Agreement, or any rights or obligations hereunder, to its Affiliate if that Affiliate is a party to a separate agreement with **SBC WISCONSIN** under Sections 251 and 252 of the Act. Any attempted assignment or transfer that is not permitted is void *ab initio*.
- 4.8.1.3 If during the Term, **SBC WISCONSIN** sells, assigns or otherwise transfers any ILEC Territory or ILEC Assets to a person other than an Affiliate or subsidiary, **SBC WISCONSIN** shall provide CLEC not less than sixty (60) calendar days prior written notice of such sale, assignment or transfer. Upon the consummation of such sale, assignment or transfer, CLEC acknowledges that **SBC WISCONSIN** shall have no further obligations under this Agreement with respect to the ILEC Territories and/or ILEC Assets subject to such sale, assignment or transfer, and that CLEC must establish its own Section 251 and 252 arrangement with the successor to such ILEC Territory and/or ILEC Assets.
- 4.8.2 Corporate Name Change and/or change in "d/b/a" only
- 4.8.2.1 Any assignment or transfer of an Agreement wherein only the CLEC name is changing, and which does not include a change to a CLEC OCN/ACNA, constitutes a CLEC Name Change. For a CLEC Name Change, CLEC will incur a record order charge for each CLEC CABS BAN. For resale or any other products not billed in CABS, to the extent a record order is available, a record order charge will apply per End User record. Rates for record orders are contained in the Appendix Pricing, Schedule of Prices. CLEC shall also submit a new Operator Service Questionnaire (OSQ) to update any OS/DA Rate Reference information and Branding pursuant to the rates terms and conditions of Appendices Resale and UNE, as applicable, at the rates specified in the Appendix Pricing, Schedule of Prices to this Agreement.
- 4.8.3 Company Code Change
- 4.8.3.1 Any assignment or transfer of an Agreement associated with the transfer or acquisition of "assets" provisioned under that Agreement, where the OCN/ACNA formerly assigned to such "assets" is changing constitutes a CLEC Company Code Change. For the purposes of Section 4.8.3.1, "assets" means any Interconnection, Resale Service, Section 251(c)(3) Unbundled Network Element, function, facility, product or service provided under that Agreement. CLEC shall provide **SBC WISCONSIN** with ninety (90) calendar days advance written notice of any assignment associated with a CLEC Company Code Change and obtain **SBC WISCONSIN**'s consent. **SBC WISCONSIN** shall not unreasonably withhold consent to a CLEC Company Code Change; provided, however, **SBC WISCONSIN**'s consent to any CLEC Company Code Change is contingent upon cure of any outstanding charges owed under this Agreement and any outstanding charges associated with the "assets" subject to the CLEC Company Code Change. In addition, CLEC acknowledges that CLEC may be required to tender additional assurance of payment if requested under the terms of this Agreement.
- 4.8.3.2 For any CLEC Company Code Change, CLEC must submit a service order changing the OCN/ACNA for each end user record and/or a service order for each circuit ID number, as applicable. CLEC shall pay the appropriate charges for each service order submitted to accomplish a CLEC Company Code Change; such charges are contained in the Appendix Pricing, Schedule of Prices. In addition, CLEC shall submit a new OSQ to

update any OS/DA Rate Reference information and Branding pursuant to the rates terms and conditions of Appendices Resale and Section 251(c)(3) UNE, as applicable, at the rates specified in the Appendix Pricing, Schedule of Prices to this Agreement. In addition, CLEC shall pay any and all charges required for re-stenciling, re-engineering, changing locks and any other work necessary with respect to Collocation, as determined on an individual case basis.

4.8.4 Assignment of any Interconnection, Resale Service, Section 251(c)(3) Unbundled Network Element, function, facility, product or service.

4.8.4.1 Any assignment or transfer of any Interconnection, Resale Service, Section 251(c)(3) Unbundled Network Element, function, facility, product or service provisioned pursuant to this Agreement without the transfer or the assignment of this Agreement shall be deemed a CLEC to CLEC Mass Migration. The CLEC that is a Party to this Agreement shall provide SBC WISCONSIN with ninety (90) calendar days advance written notice of any CLEC to CLEC Mass Migration. CLEC's written notice shall include the anticipated effective date of the assignment or transfer. The acquiring CLEC must cure any outstanding charges associated with any Interconnection, Resale Service, Section 251(c)(3) Unbundled Network Element, function, facility, product or service to be transferred. In addition, the acquiring CLEC may be required to tender additional assurance of payment if requested under the terms of the acquiring CLEC's agreement.

4.8.4.2 Both CLECs involved in any CLEC to CLEC Mass Migration shall comply with all Applicable Law relating thereto, including but not limited to all FCC and state Commission rules relating to notice(s) to End Users. The acquiring CLEC shall be responsible for issuing all service orders required to migrate any Interconnection, Resale Service, Section 251(c)(3) Unbundled Network Element, function, facility, product or service provided hereunder. The appropriate service order charge or administration fee (for interconnection) will apply as specified in the Appendix Pricing, Schedule of Prices to the acquiring CLEC's agreement. The acquiring CLEC shall also submit a new OSQ to update any OS/DA Rate Reference information and Branding pursuant to the rates terms and conditions of Appendices Resale and Section 251(c)(3) UNE, as applicable, at the rates specified in the Appendix Pricing, Schedule of Prices to the acquiring CLEC's agreement. In addition, the acquiring CLEC shall pay any and all charges required for re-stenciling, re-engineering, changing locks and any other work necessary with respect to Collocation, as determined on an individual case basis.

4.8.5 Project Coordination

4.8.5.1 INTENTIONALLY LEFT BLANK.

4.8.5.2 SBC WISCONSIN will provide project management support to minimize any possible service outages during any CLEC to CLEC Mass Migration. Should SBC WISCONSIN's most current version of LSOR or ASOR guidelines not support the required order activity, SBC WISCONSIN will issue service orders at the manual rate, as specified in the Appendix Pricing, Schedule of Prices to this Agreement, based upon type of service provided, and on the condition that CLEC provides to SBC WISCONSIN any and all information SBC WISCONSIN reasonably requests to effectuate such changes.

4.9 When an End User changes its service provider from SBC WISCONSIN to CLEC or from CLEC to SBC WISCONSIN and does not retain its original telephone number, the Party formerly providing service to such End User shall furnish a referral announcement ("Referral Announcement") on the original telephone number that specifies the End User's new telephone number.

4.9.1. Referral Announcements shall be provided by a Party to the other Party for the period of time and at the rates set forth in the referring Party's tariff(s); provided, however, if either Party provides Referral Announcements for a period different (either shorter or longer) than the

period(s) stated in its tariff(s) when its End Users change their telephone numbers, such Party shall provide the same level of service to End Users of the other Party.

- 4.10 Each Party shall be responsible for labor relations with its own employees. Each Party agrees to notify the other Party as soon as practicable whenever such Party has knowledge that a labor dispute concerning its employees is delaying or threatens to delay such Party's timely performance of its obligations under this Agreement and shall endeavor to minimize impairment of service to the other Party (for example, by using its management personnel to perform work or by other means) in the event of a labor dispute to the extent permitted by Applicable Law.
- 4.11 Each Party shall act in good faith in its performance under this Agreement and, in each case in which a Party's consent or agreement is required or requested hereunder, such Party shall not unreasonably withhold or delay such consent or agreement.
- 4.12 This Agreement contains comprehensive OSS terms and conditions; however, CLEC represents and covenants that it will only use OSS furnished pursuant to this Agreement for activities related to Section 251(c)(3) UNEs, Resold Services or other services covered by this Agreement, for which this Agreement contains explicit terms, conditions and rates.
- 4.13 The Parties acknowledge and agree that they do not intend to include products and services in this Agreement that do not have corresponding rates and charges. Accordingly, if this Agreement is executed and/or approved by the Commission and the Parties later discover that a product or service is included in this Agreement or applicable tariff without an associated rate or charge, the Parties agree that they will agree upon a rate or charge to include in this Agreement before the product or service is provided or performed. If the Parties cannot agree, either Party may pursue dispute resolution under the applicable provisions of this Agreement.

5. EFFECTIVE DATE, TERM, AND TERMINATION

- 5.1 In SBC WISCONSIN, the Effective Date of this Agreement shall be ten (10) calendar days after the Commission approves this Agreement under Section 252(e) of the Act or, absent such Commission approval, the date this Agreement is deemed approved under Section 252(e)(4) of the Act.
- 5.2 The term of this Agreement shall commence upon the Effective Date of this Agreement and shall expire on January 13, 2008, provided; however, should CLEC implement (i.e. provided assurance of payment, ordered facilities, and submitted ASRs for trunking) this Agreement within six (6) months of the Effective Date, then this Agreement will automatically renew for one additional year and expire on January 13, 2009 (the "**Term**"). Absent the receipt by one Party of written notice from the other Party within 180 calendar days prior to the expiration of the Term to the effect that such Party does not intend to extend the Term, this Agreement shall remain in full force and effect on and after the expiration of the Term until terminated by either Party pursuant to Section 5.3 or 5.4.
- 5.3 Notwithstanding any other provision of this Agreement, either Party may terminate this Agreement and the provision of any Interconnection, Resale Services, Section 251(c)(3) Unbundled Network Elements, functions, facilities, products or services provided pursuant to this Agreement, at the sole discretion of the terminating Party, in the event that the other Party fails to perform a material obligation or breaches a material term of this Agreement and the other Party fails to cure such nonperformance or breach within forty-five (45) calendar days after written notice thereof. Any termination of this Agreement pursuant to this Section 5.3 shall take effect immediately upon delivery of written notice to the other Party that it failed to cure such nonperformance or breach within forty-five (45) calendar days after written notice thereof.
- 5.4 If pursuant to Section 5.2, this Agreement continues in full force and effect after the expiration of the Term, either Party may terminate this Agreement after delivering written notice to the other Party of its intention to terminate this Agreement, subject to Sections 5.5 and 5.6. Neither Party shall have any liability to the other Party for termination of this Agreement pursuant to this Section 5.4 other than its obligations under Sections 5.5 and 5.6.

- 5.5 Upon termination or expiration of this Agreement in accordance with Sections 5.2, 5.3 or 5.4:
- 5.5.1 Each Party shall continue to comply with its obligations set forth in Section 40; and
 - 5.5.2 Each Party shall promptly pay all amounts owed under this Agreement or place any Disputed Amounts into an escrow account that complies with Section 8.4 hereof;
 - 5.5.3 Each Party's confidentiality obligations shall survive; and
 - 5.5.4 Each Party's indemnification obligations shall survive.
- 5.6 If either Party serves notice of expiration pursuant to Section 5.2 or Section 5.4, CLEC shall have (10) Business Days to provide SBC WISCONSIN written confirmation if CLEC wishes to pursue a successor agreement with SBC WISCONSIN or terminate its Agreement. CLEC shall identify the action to be taken in Wisconsin. If CLEC wishes to pursue a successor agreement with SBC WISCONSIN, CLEC shall attach to its written confirmation or notice of expiration/termination, as applicable, a written request to commence negotiations with SBC WISCONSIN under Sections 251/252 of the Act and identify each of the state(s) the successor agreement will cover. Upon receipt of CLEC's Section 252(a)(1) request, the Parties shall commence good faith negotiations on a successor agreement.
- 5.7 If written notice is not issued pursuant to Section 5.2, the rates, terms and conditions of this Agreement shall continue in full force and effect until the earlier of (i) the effective date of its successor agreement, whether such successor agreement is established via negotiation, arbitration or pursuant to Section 252(i) of the Act; or (ii) the date that is ten (10) months after the date on which SBC WISCONSIN received CLEC's Section 252(a)(1) request.
- 5.8 If at any time during the Section 252(a)(1) negotiation process (prior to or after the expiration date or termination date of this Agreement), CLEC withdraws its Section 252(a)(1) request, CLEC must include in its notice of withdrawal a request to adopt a successor agreement under Section 252(i) of the Act or affirmatively state that CLEC does not wish to pursue a successor agreement with SBC WISCONSIN for a given state. The rates, terms and conditions of this Agreement shall continue in full force and effect until the later of: 1) the expiration of the term of this Agreement, or 2) the expiration of ninety (90) calendar days after the date CLEC provides notice of withdrawal of its Section 252(a)(1) request. If the Term of this Agreement has expired, on the earlier of (i) the ninety-first (91st) calendar day following SBC WISCONSIN's receipt of CLEC's notice of withdrawal of its Section 252(a)(1) request or (ii) the effective date of the agreement following approval by the Commission of the adoption of an agreement under 252(i), the Parties shall, have no further obligations under this Agreement except those set forth in Section 5.5 of this Agreement.
- 5.9 If CLEC does not affirmatively state that it wishes to pursue a successor agreement with SBC WISCONSIN in its, as applicable, notice of expiration or termination or the written confirmation required after receipt of SBC WISCONSIN's notice of expiration or termination, then the rates, terms and conditions of this Agreement shall continue in full force and effect until the later of 1) the expiration of the Term of this Agreement, or 2) the expiration of ninety (90) calendar days after the date CLEC provided or received notice of expiration or termination. If the Term of this Agreement has expired, on the ninety-first (91st) day following CLEC provided or received notice of expiration or termination, the Parties shall have no further obligations under this Agreement except those set forth in Section 5.5 of this Agreement.
- 5.10 In the event of termination of this Agreement pursuant to Section 5.9, SBC WISCONSIN and CLEC shall cooperate in good faith to effect an orderly transition of service under this Agreement; provided that CLEC shall be solely responsible (from a financial, operational and administrative standpoint) to ensure that its End Users have been transitioned to a new LEC by the expiration date or termination date of this Agreement.

6. END USER FRAUD

- 6.1 Neither Party shall be liable for any fraud associated with the other Party's End User's account, including 1+ IntraLATA toll, ported numbers, and Alternate Billing Traffic (**ABT**). ABT is a service that allows End Users to bill calls to account(s) that might not be associated with the originating line. There are three types of ABT calls: calling card, collect, and third number billed calls.
- 6.2 The Parties agree to cooperate with one another to investigate, minimize, and take corrective action in cases of fraud involving 1+ IntraLATA toll calls, ABT, and ported numbers. The Parties' fraud minimization procedures are to be cost-effective and implemented so as not to unduly burden or harm one Party as compared to the other.
- 6.3 In cases of suspected fraudulent activity by an End User, at a minimum, the cooperation referenced in Section 6.2 will include providing to the other Party, upon request, information concerning Customers who terminate services to that Party without paying all outstanding charges. The Party seeking such information is responsible for securing the End User's permission to obtain such information.
- 6.4 SBC WISCONSIN will provide notification messages to CLEC on suspected occurrences of ABT-related fraud on CLEC accounts stored in the applicable LIDB.
- 6.4.1 CLEC understands that Fraud Monitoring System alerts only identify potential occurrences of fraud. CLEC understands and agrees that it will need to perform its own investigations to determine whether a fraud situation actually exists. CLEC understands and agrees that it will also need to determine what, if any, action CLEC should take as a result of a Fraud Monitoring System alert.
- 6.4.2 The Parties will provide contact names and numbers to each other for the exchange of Fraud Monitoring System alert notification.

7. ASSURANCE OF PAYMENT

- 7.1 Upon request by SBC WISCONSIN, CLEC will provide SBC WISCONSIN with adequate assurance of payment of amounts due (or to become due) to SBC WISCONSIN.
- 7.2 Assurance of payment may be requested by SBC WISCONSIN if:
- 7.2.1 at the Effective Date CLEC had not already established satisfactory credit by having made at least twelve (12) consecutive months of timely payments to SBC WISCONSIN for charges incurred as a CLEC; or
- 7.2.2 in SBC WISCONSIN's reasonable judgment, at the Effective Date or at any time thereafter, there has been an impairment of the established credit, financial health, or credit worthiness of CLEC. Such impairment will be determined from information available from financial sources, including but not limited to Moody's, Standard and Poor's, and the Wall Street Journal. Financial information about CLEC that may be considered includes, but is not limited to, investor warning briefs, rating downgrades, and articles discussing pending credit problems; or
- 7.2.3 CLEC fails to timely pay a bill rendered to CLEC by SBC WISCONSIN (except such portion of a bill that is subject to a good faith, bona fide dispute and as to which CLEC has complied with all requirements set forth in Section 8.4); or
- 7.2.4 CLEC admits its inability to pay its debts as such debts become due, has commenced a voluntary case (or has had an involuntary case commenced against it) under the U.S. Bankruptcy Code or any other law relating to insolvency, reorganization, winding-up, composition or adjustment of debts or the like, has made an assignment for the benefit of creditors or is subject to a receivership or similar proceeding.
- 7.3 Unless otherwise agreed by the Parties, the assurance of payment will, at CLEC's option, consist of
- 7.3.1 a cash security deposit in U.S. dollars held by SBC WISCONSIN ("Cash Deposit") or

- 7.3.2 an unconditional, irrevocable standby bank letter of credit from a financial institution acceptable to **SBC WISCONSIN** naming the SBC-owned ILEC(s) designated by **SBC WISCONSIN** as the beneficiary(ies) thereof and otherwise in form and substance satisfactory to **SBC WISCONSIN** ("Letter of Credit").
- 7.3.3 The Cash Deposit or Letter of Credit must be in an amount equal to three (3) months anticipated charges (including, but not limited to, recurring, non-recurring and usage sensitive charges, termination charges and advance payments), as reasonably determined by **SBC WISCONSIN**, for the Interconnection, Resale Services, Section 251(c)(3) Unbundled Network Elements, Collocation or any other functions, facilities, products or services to be furnished by **SBC WISCONSIN** under this Agreement.
- 7.4 To the extent that CLEC elects to provide a Cash Deposit, the Parties intend that the provision of such Cash Deposit shall constitute the grant of a security interest in the Cash Deposit pursuant to Article 9 of the Uniform Commercial Code in effect in any relevant jurisdiction.
- 7.5 A Cash Deposit will accrue interest, however, **SBC WISCONSIN** will not pay interest on a Letter of Credit.
- 7.6 **SBC WISCONSIN** may, but is not obligated to, draw on the Letter of Credit or the Cash Deposit, as applicable, upon the occurrence of any one of the following events:
- 7.6.1 CLEC owes **SBC WISCONSIN** undisputed charges under this Agreement that are more than thirty (30) calendar days past due; or
- 7.6.2 CLEC admits its inability to pay its debts as such debts become due, has commenced a voluntary case (or has had an involuntary case commenced against it) under the U.S. Bankruptcy Code or any other law relating to insolvency, reorganization, winding-up, composition or adjustment of debts or the like, has made an assignment for the benefit of creditors or is subject to a receivership or similar proceeding; or
- 7.6.3 The expiration or termination of this Agreement.
- 7.7 If **SBC WISCONSIN** draws on the Letter of Credit or Cash Deposit, upon request by **SBC WISCONSIN**, CLEC will provide a replacement or supplemental letter of credit or cash deposit conforming to the requirements of Section 7.3.
- 7.8 Notwithstanding anything else set forth in this Agreement, if **SBC WISCONSIN** makes a request for assurance of payment in accordance with the terms of this Section, then **SBC WISCONSIN** shall have no obligation thereafter to perform under this Agreement until such time as CLEC has furnished **SBC WISCONSIN** with the assurance of payment requested; provided, however, that **SBC WISCONSIN** will permit CLEC a minimum of ten (10) Business Days to respond to a request for assurance of payment before invoking this Section.
- 7.8.1 If CLEC fails to furnish the requested adequate assurance of payment on or before the date set forth in the request, **SBC WISCONSIN** may also invoke the provisions set forth in Section 9.5 through Section 9.7.
- 7.9 A cash deposit held by **SBC WISCONSIN** shall be returned to CLEC at the expiration of twelve months from the date the CLEC receives its first bill under this Agreement after paying the cash deposit, so long as CLEC made satisfactory payment of all charges billed under this Agreement during that twelve month period. For purposes of the preceding sentence, "satisfactory payment" shall mean that payment was made after the date the bill is due no more than one time during the twelve month period and that no payment was made by a check that was subsequently dishonored. If the CLEC does not meet these refund criteria, the deposit may be retained for an additional six months, at the end of which another review will be made to determine whether CLEC has made satisfactory payment (as defined in the preceding sentence) of all charges within the twelve months immediately preceding that review.

- 7.10 The fact that a Cash Deposit or Letter of Credit is requested by SBC WISCONSIN shall in no way relieve CLEC from timely compliance with all payment obligations under this Agreement (including, but not limited to, recurring, non-recurring and usage sensitive charges, termination charges and advance payments), nor does it constitute a waiver or modification of the terms of this Agreement pertaining to disconnection or re-entry for non-payment of any amounts required to be paid hereunder.

8. BILLING AND PAYMENT OF CHARGES

- 8.1 Unless otherwise stated, each Party will render monthly bill(s) to the other for Interconnection, Resale Services, Section 251(c)(3) Unbundled Network Elements, Collocation, functions, facilities, products and services provided hereunder at the rates set forth in the applicable Appendix Pricing, as set forth in applicable tariffs or other documents specifically referenced herein and, as applicable, as agreed upon by the Parties or authorized by a Party.
- 8.1.1 Remittance in full of all bills rendered by SBC WISCONSIN is due the latter of (i) within thirty (30) calendar days of each bill date, or (ii) twenty (20) Business Days after receipt of the bill, (the "**Bill Due Date**"). Payment must be made in accordance with the terms set forth in Section 8.3 of this Agreement.
- 8.1.2 Remittance in full of all bills rendered by CLEC is due within thirty (30) calendar days of each bill date (the "**Bill Due Date**").
- 8.1.3 If either Party fails to remit payment for any charges by the Bill Due Date, or if payment for any portion of the charges is received after the Bill Due Date, or if payment for any portion of the charges is received in funds which are not immediately available as of the Bill Due Date (individually and collectively, "**Past Due**"), then a late payment charge will be assessed as provided in Sections 8.1.5.1 through 8.1.5.3, as applicable.
- 8.1.3.1 If any charge incurred under this Agreement that is billed out of SBC WISCONSIN's billing system is Past Due, the unpaid amounts will accrue interest from the Bill Due Date at the lesser of (i) one and one-half percent (1 ½%) per month and (ii) the highest rate of interest that may be charged under Applicable Law, compounded daily from the day following the Bill Due Date to and including the date that the payment is actually made and available.
- 8.2 If any charge incurred by SBC WISCONSIN under this Agreement is Past Due, the unpaid amounts will accrue interest from the day following the Bill Due Date until paid. The interest rate applied will be the lesser of (i) the rate used to compute the Late Payment Charge contained in the applicable SBC WISCONSIN intrastate access services tariff for that state and (ii) the highest rate of interest that may be charged under Applicable Law, compounded daily from the Bill Due Date to and including the date that the payment is actually made and available.
- 8.3 Except as otherwise provided in Section 8.3.1.1 below, CLEC shall make all payments to SBC WISCONSIN via electronic funds credit transfers through the Automated Clearing House Association (ACH) network to the financial institution designated by SBC WISCONSIN. Remittance information will be communicated together with the funds transfer via the ACH network. CLEC must use the CCD+ or the CTX transaction set. CLEC and SBC WISCONSIN will abide by the National Automated Clearing House Association (NACHA) Rules and Regulations. Each ACH credit transfer must be received by SBC WISCONSIN no later than the Bill Due Date of each bill or Late Payment Charges will apply. SBC WISCONSIN is not liable for any delays in receipt of funds or errors in entries caused by CLEC or Third Parties, including CLEC's financial institution. CLEC is responsible for its own banking fees.
- 8.3.1 Processing of payments not made via electronic funds credit transfers through the ACH network may be delayed. CLEC is responsible for any Late Payment Charges resulting from CLEC's failure to use electronic funds credit transfers through the ACH network.
- 8.3.1.1 CLEC shall make each payment to SBC WISCONSIN via check with immediately available funds so that SBC WISCONSIN shall receive such payment no later than the

Billing Due Date of each bill. If SBC WISCONSIN issues two late payment notices, unless such late payment notices were issued in error as provided herein, within a twelve month period to CLEC, CLEC shall immediately be required to make all payments to SBC WISCONSIN via electronic funds credit transfers through the Automated Clearing House Association (ACH) network to the financial institution designated by SBC WISCONSIN, unless such late payment notices were issued in error. Remittance information will be communicated together with the funds transfer via the ACH network. CLEC shall use the CCD+ or the CTX transaction set. CLEC and SBC WISCONSIN shall abide by the National Automated Clearing House Association (NACHA) Rules and Regulations. Each ACH credit transfer shall be received by SBC WISCONSIN no later than the Bill Due Date of each bill or Late Payment Charges will apply. SBC WISCONSIN shall not be liable for any delays in receipt of funds or errors in entries caused by CLEC or Third Parties, including CLEC's financial institution. CLEC is responsible for its own banking fees.

- 8.4 If any portion of an amount due to a Party (the "**Billing Party**") under this Agreement is subject to a bona fide dispute between the Parties, the Party billed (the "**Non-Paying Party**") must, prior to the Bill Due Date, give written notice to the Billing Party of the amounts it disputes ("**Disputed Amounts**") and include in such written notice the specific details and reasons for disputing each item listed in Section 10.4.1. The Disputing Party should utilize any existing and preferred form provided by the Billing Party to communicate disputes to the Billing Party. On or before the Bill Due Date, the Non-Paying Party must pay (i) all undisputed amounts to the Billing Party, and (ii) all Disputed Amounts [other than disputed charges arising from Appendix Inter-carrier Compensation] into an interest bearing escrow account with a Third Party escrow agent mutually agreed upon by the Parties.
- 8.5 Disputed Amounts in escrow will be subject to Late Payment Charges as set forth in Section 8.1.3.1.
- 8.6 Requirements to Establish Escrow Accounts.
- 8.6.1 To be acceptable, the Third Party escrow agent must meet all of the following criteria:
- 8.6.1.1 The financial institution proposed as the Third Party escrow agent must be located within the continental United States;
- 8.6.1.2 The financial institution proposed as the Third Party escrow agent may not be an Affiliate of either Party; and
- 8.6.1.3 The financial institution proposed as the Third Party escrow agent must be authorized to handle ACH (credit transactions) (electronic funds) transfers.
- 8.6.2 In addition to the foregoing requirements for the Third Party escrow agent, the disputing Party and the financial institution proposed as the Third Party escrow agent must agree in writing furnished to the Billing Party that the escrow account will meet all of the following criteria:
- 8.6.2.1 The escrow account must be an interest bearing account;
- 8.6.2.2 all charges associated with opening and maintaining the escrow account will be borne by the disputing Party;
- 8.6.2.3 that none of the funds deposited into the escrow account or the interest earned thereon may be used to pay the financial institution's charges for serving as the Third Party escrow agent;
- 8.6.2.4 all interest earned on deposits to the escrow account will be disbursed to the Parties in the same proportion as the principal; and
- 8.6.2.5 disbursements from the escrow account will be limited to those:
- 8.6.2.5.1 authorized in writing by both the disputing Party and the Billing Party (that is, signature(s) from representative(s) of the disputing Party only are not sufficient to properly authorize any disbursement); or

- 8.6.2.5.2 made in accordance with the final, non-appealable order of the arbitrator appointed pursuant to the provisions of Section 10.7; or
 - 8.6.2.5.3 made in accordance with the final, non-appealable order of the court that had jurisdiction to enter the arbitrator's award pursuant to Section 10.7.
- 8.6.3 Issues related to Disputed Amounts shall be resolved in accordance with the procedures identified in the Dispute Resolution provisions set forth in Section 10.
- 8.7 If the Non-Paying Party disputes any charges and any portion of the dispute is resolved in favor of such Non-Paying Party, the Parties will cooperate to ensure that all of the following actions are completed:
- 8.7.1 the Billing Party will credit the invoice of the Non-Paying Party for that portion of the Disputed Amounts resolved in favor of the Non-Paying Party, together with any Late Payment Charges assessed with respect thereto no later than the second Bill Due Date after resolution of the dispute;
 - 8.7.1.1 within ten (10) Business Days after resolution of the dispute, the portion of the escrowed Disputed Amounts resolved in favor of the Non-Paying Party will be released to the Non-Paying Party, together with any interest accrued thereon;
 - 8.7.1.2 within ten (10) Business Days after resolution of the dispute, the portion of the escrowed Disputed Amounts resolved in favor of the Billing Party will be released to the Billing Party, together with any interest accrued thereon; and
 - 8.7.1.3 no later than the third Bill Due Date after the resolution of the dispute, the Non-Paying Party will pay the Billing Party the difference between the amount of accrued interest the Billing Party received from the escrow disbursement and the amount of Late Payment Charges the Billing Party is entitled to receive pursuant to Section 8.1.5.
- 8.8 If the Non-Paying Party disputes any charges and the entire dispute is resolved in favor of the Billing Party, the Parties will cooperate to ensure that all of the actions required by Section 8.7.1.1 and Section 8.7.1.3 are completed within the times specified therein.
- 8.8.1 Failure by the Non-Paying Party to pay any charges determined to be owed to the Billing Party within the time specified in Section 8.7 shall be grounds for termination of the Interconnection, Resale Services, Section 251(c)(3) Unbundled Network Elements, Collocation, functions, facilities, products and services provided under this Agreement.
- 8.9 If either Party requests one or more additional copies of a bill, the requesting Party will pay the Billing Party a reasonable fee for each additional copy, unless such copy was requested due to failure in delivery of the original bill or correction(s) to the original bill.
- 8.10 Exchange of Billing Message Information
- 8.10.1 **SBC WISCONSIN** will provide CLEC a specific Daily Usage File (“DUF” or “Usage Extract”) for Resale Services and Section 251(c)(3) Unbundled Network Element usage sensitive services provided hereunder (“**Customer Usage Data**”). Such Customer Usage Data will be provided by **SBC WISCONSIN** in accordance with Exchange Message Interface (EMI) guidelines supported by OBF. Any exceptions to the supported formats will be noted in the DUF implementation requirements documentation for each SBC-owned ILEC. The DUF will include (i) specific daily usage, including both Section 251(b)(5) traffic (if and where applicable) and LEC-carried IntraLATA Toll Traffic, in EMI format for usage sensitive services furnished in connection with each Resale Service and Section 251(c)(3) Unbundled Network Element to the extent that similar usage sensitive information is provided to retail End Users of **SBC WISCONSIN** within that state, (ii) with sufficient detail to enable CLEC to bill its End Users for usage sensitive services furnished by **SBC WISCONSIN** in connection with Resale Services and Section 251(c)(3) Unbundled Network Elements provided by **SBC WISCONSIN**. Procedures and

processes for implementing the interfaces with SBC WISCONSIN will be included in implementation requirements documentation.

- 8.10.2 To establish file transmission for the Daily Usage File, CLEC must provide to SBC WISCONSIN a separate written request for each state no less than sixty (60) calendar days prior to the desired first transmission date for each file.
- 8.10.3 Call detail for LEC-carried calls that are alternately billed to CLEC End Users' lines provided by SBC WISCONSIN through Resale will be forwarded to CLEC as rated call detail on the DUF.
- 8.10.4 Interexchange call detail on Resale Services that is forwarded to SBC WISCONSIN for billing, which would otherwise be processed by SBC WISCONSIN for its retail End Users, will be returned to the IXC and will not be passed through to CLEC. This call detail will be returned to the IXC with a transaction code indicating that the returned call originated from a resold account. Billing for Information Services and other ancillary services traffic on Resale Services will be passed through when SBC WISCONSIN records the message.
- 8.11 When CLEC serves its End User via switch-based service, both Parties will settle tariffed ABT charges for calls accepted by each Party's End Users. The originating Party will pay the Party that has the billable End User a Billing and Collection (B&C) fee per billed message as set forth in the pricing schedule.

9. NONPAYMENT AND PROCEDURES FOR DISCONNECTION

- 9.1 If a Party is furnished Interconnection, Resale Services, Section 251(c)(3) Unbundled Network Elements, Collocation, functions, facilities, products and services under the terms of this Agreement in more than one (1) state, Sections 9.1 through 9.7, inclusive, shall be applied separately for each such state.
- 9.2 Failure to pay charges shall be grounds for disconnection of Interconnection, Resale Services, Section 251(c)(3) Unbundled Network Elements, Collocation, functions, facilities, products and services furnished under this Agreement. If a Party fails to pay any charges billed to it under this Agreement, including but not limited to any Late Payment Charges or miscellaneous charges ("**Unpaid Charges**"), and any portion of such Unpaid Charges remain unpaid after the Bill Due Date, the Billing Party will notify the Non-Paying Party in writing that in order to avoid disruption or disconnection of the Interconnection, Resale Services, Section 251(c)(3) Unbundled Network Elements, Collocation, functions, facilities, products and services furnished under this Agreement, the Non-Paying Party must remit all Unpaid Charges to the Billing Party within ten (10) Business Days following receipt of the Billing Party's notice of Unpaid Charges.
- 9.3 If the Non-Paying Party desires to dispute any portion of the Unpaid Charges, the Non-Paying Party must complete all of the following actions not later than ten (10) Business Days following receipt of the Billing Party's notice of Unpaid Charges:
- 9.3.1 notify the Billing Party in writing which portion(s) of the Unpaid Charges it disputes, including the total amount disputed ("**Disputed Amounts**") and the specific details listed in Section 10.4.1 of this Agreement, together with the reasons for its dispute; and
- 9.3.2 pay all undisputed Unpaid Charges to the Billing Party; and
- 9.3.3 pay all Disputed Amounts [other than disputed charges arising from Appendix Intercarrier Compensation] into an interest bearing escrow account that complies with the requirements set forth in Section 8.6; and
- 9.3.4 furnish written evidence to the Billing Party that the Non-Paying Party has established an interest bearing escrow account that complies with all of the terms set forth in Section 8.6 and deposited a sum equal to the Disputed Amounts [other than disputed charges arising from Appendix Intercarrier Compensation] into that account. Until evidence that the full amount of the Disputed

Charges [other than disputed charges arising from Appendix Intercarrier Compensation] has been deposited into an escrow account that complies with Section 8.6 is furnished to the Billing Party, such Unpaid Charges will not be deemed to be “disputed” under Section 10.

- 9.4 Issues related to Disputed Amounts shall be resolved in accordance with the procedures identified in the Dispute Resolution provision set forth in Section 10.
- 9.5. If the Non-Paying Party fails to (a) pay any undisputed Unpaid Charges in response to the Billing Party's Section 9.2 notice, (b) deposit the disputed portion of any Unpaid Charges into an interest bearing escrow account that complies with all of the terms set forth in Section 8.6 within the time specified in Section 9.3, (c) timely furnish any assurance of payment requested in accordance with Section 7 or (d) make a payment in accordance with the terms of any mutually agreed payment arrangement, the Billing Party may, in addition to exercising any other rights or remedies it may have under Applicable Law, provide written demand to the Non-Paying Party for payment of any of the obligations set forth in (a) through (d) of this Section within ten (10) Business Days. On the day that the Billing Party provides such written demand to the Non-Paying Party, the Billing Party may also exercise any or all of the following options:
- 9.5.1 suspend acceptance of any application, request or order from the Non-Paying Party for new or additional Interconnection, Resale Services, Section 251(c)(3) Unbundled Network Elements, Collocation, functions, facilities, products or services under this Agreement; and/or
 - 9.5.2 suspend completion of any pending application, request or order from the Non-Paying Party for new or additional Interconnection, Resale Services, Section 251(c)(3) Unbundled Network Elements, Collocation, functions, facilities, products or services under this Agreement.
- 9.6 Notwithstanding anything to the contrary in this Agreement, the Billing Party's exercise of any of its options under Section 9.5, Section 9.5.1 and Section 9.5.2:
- 9.6.1 will not delay or relieve the Non-Paying Party's obligation to pay all charges on each and every invoice on or before the applicable Bill Due Date, and
 - 9.6.2 will exclude any affected application, request, order or service from any otherwise applicable performance interval, Performance Benchmark or Performance Measure.
- 9.7 If the Non-Paying Party fails to pay the Billing Party on or before the date specified in the demand provided under Section 9.5 of this Agreement, the Billing Party may, in addition to exercising any other rights or remedies it may have under Applicable Law,
- 9.7.1 cancel any pending application, request or order from the Non-Paying Party for new or additional Interconnection, Resale Services, Section 251(c)(3) Unbundled Network Elements, Collocation, functions, facilities, products or services under this Agreement; and
 - 9.7.2 discontinue providing any Interconnection, Resale Services, Section 251(c)(3) Unbundled Network Elements, Collocation, functions, facilities, products or services furnished under this Agreement.
 - 9.7.2.1 The Billing Party has no liability to the Non-Paying Party or its End Users in the event of discontinuance of service.
 - 9.7.2.2 Additional charges may become applicable under the terms of this Agreement following discontinuance of service.

9.8 INTENTIONALLY LEFT BLANK

9.9 Limitation on Back-billing and Credit Claims:

9.9.1 Notwithstanding anything to the contrary in this Agreement, a Party shall be entitled to

9.9.1.1 Back-bill for or claim credit for any charges for services provided pursuant to this Agreement that are found to be unbilled, under-billed or over-billed, but only when such charges appeared or should have appeared on a bill dated within the twelve (12) months immediately preceding the date on which the Billing Party provided written notice to the Billed Party of the amount of the back-billing or the Billed Party provided written notice to the Billing Party of the claimed credit amount. The Parties agree that the twelve (12) month limitation on back-billing and credit claims set forth in the preceding sentence shall be applied prospectively only after the Effective Date of this Agreement, meaning that the twelve month period for any back-billing or credit claims may only include billing periods that fall entirely after the Effective Date of this Agreement and will not include any portion of any billing period that began prior to the Effective Date of this Agreement.

9.9.1.2 Back-billing and credit claims, as limited above, will apply to all Interconnection, Resale Services, Unbundled Network Elements, Collocation, facilities, functions, product and services purchased under this Agreement. Reciprocal Compensation is specifically excluded from this Section and is addressed separately in the Intercarrier Compensation Appendix.

10. DISPUTE RESOLUTION

10.1 Finality of Disputes

10.1.1 Except as otherwise specifically provided for in this Agreement, no claim may be brought for any dispute arising from this Agreement more than twenty-four (24) months from the date the occurrence which gives rise to the dispute is discovered or reasonably should have been discovered with the exercise of due care and attention.

10.1.2 Notwithstanding anything contained in this Agreement to the contrary, a Party shall be entitled to dispute only those charges which appeared on a bill dated within the twelve (12) months immediately preceding the date on which the Billing Party received notice of such Disputed Amounts.

10.2 Alternative to Litigation

10.2.1 The Parties desire to resolve disputes arising out of this Agreement without litigation. Accordingly, the Parties agree to use the following Dispute Resolution procedures with respect to any controversy or claim arising out of or relating to this Agreement or its breach.

10.3 Commencing Dispute Resolution

10.3.1 Dispute Resolution shall commence upon one Party's receipt of written notice of a controversy or claim arising out of or relating to this Agreement or its breach. No Party may pursue any claim unless such written notice has first been given to the other Party. There are three (3) separate Dispute Resolution methods:

10.3.1.1 **SBC WISCONSIN** Local Service Center (LSC)

10.3.1.2 Informal Dispute Resolution; and

10.3.1.3 Formal Dispute Resolution, each of which is described below.

10.4 Local Service Center Dispute Resolution - the following Dispute Resolution procedures will apply with respect to any billing dispute arising out of or relating to the Agreement. Written notice sent to **SBC WISCONSIN** for Disputed Amounts must be made on the "13 State Billing Claims Dispute Form".

10.4.1 If the written notice given pursuant to Section 10.3 discloses that a CLEC dispute relates to billing, then the procedures set forth in this Section 10.4 shall be used and the dispute shall first

be referred to the appropriate **SBC WISCONSIN**'s Local Service Center. In order to resolve a billing dispute, CLEC shall furnish **SBC WISCONSIN** written notice of (i) the date of the bill in question, (ii) CBA/ESBA/ASBS or BAN number of the bill in question, (iii) telephone number, circuit ID number or trunk number in question, (iv) any USOC information relating to the item questioned, (v) amount billed and (vi) amount in question and (vii) the reason that CLEC disputes the billed amount. To be deemed a "dispute" under this Section 10.4, CLEC must provide evidence that it has either paid the disputed amount or established an interest bearing escrow account that complies with the requirements set forth in Section 8.6 of this Agreement and deposited all Unpaid Charges relating to Resale Services and Section 251(c)(3) Unbundled Network Elements into that escrow account. Failure to provide the information and evidence required by this Section 10.4.1 not later than twenty-nine (29) calendar days following the Bill Due Date shall constitute CLEC's irrevocable and full waiver of its right to dispute the subject charges.

10.4.2 The Parties shall attempt to resolve Disputed Amounts appearing on **SBC WISCONSIN**'s current billing statements thirty (30) to sixty (60) calendar days from the Bill Due Date (provided the CLEC furnishes all requisite information and evidence under Section 10.4.1 by the Bill Due Date). If not resolved within thirty (30) calendar days, upon request, **SBC WISCONSIN** will notify CLEC of the status of the dispute and the expected resolution date.

10.4.3 The Parties shall attempt to resolve Disputed Amounts appearing on statements prior to the current billing statement within thirty (30) to ninety (90) calendar days, but resolution may take longer depending on the complexity of the dispute. If not resolved within thirty (30) calendar days from the date notice of the Disputed Amounts was received (provided that CLEC furnishes all requisite information and evidence under Section 10.4.1), **SBC WISCONSIN** will notify CLEC of the status of the dispute and the expected resolution date.

10.4.4 Any notice of Disputed Amounts given by **SBC WISCONSIN** to CLEC pursuant to Section 10.3 shall furnish CLEC written notice of: (i) the date of the bill in question, (ii) the account number or other identification of the bill in question, (iii) any telephone number, circuit ID number or trunk number in question, (iv) any USOC (or other descriptive information) questioned, (v) the amount billed, (vi) the amount in question, and (vii) the reason that **SBC WISCONSIN** disputes the billed amount. The Parties shall attempt to resolve Disputed Amounts appearing on current billing statement(s) thirty (30) to sixty (60) calendar days from the Bill Due Date (provided **SBC WISCONSIN** furnishes all requisite information by the Bill Due Date) and Disputed Amounts appearing on statements prior to the current billing statement within thirty (30) to ninety (90) calendar days, but resolution may take longer depending on the complexity of the dispute. If not resolved within thirty (30) calendar days, CLEC will notify **SBC WISCONSIN** of the status of the dispute and the expected resolution date.

10.4.5 If the Non-Paying Party is not satisfied by the resolution of the billing dispute under this Section 10.4, the Non-Paying Party may notify the Billing Party in writing that it wishes to invoke the Informal Resolution of Disputes afforded pursuant to Section 10.5 of this Agreement.

10.5 Informal Resolution of Disputes

10.5.1 Upon receipt by one Party of notice of a dispute by the other Party pursuant to Section 10.3 or Section 10.4.5, each Party will appoint a knowledgeable, responsible representative to meet and negotiate in good faith to resolve any dispute arising under this Agreement. The location, form, frequency, duration, and conclusion of these discussions will be left to the discretion of the representatives. Upon agreement, the representatives may utilize other alternative Dispute Resolution procedures such as mediation to assist in the negotiations. Discussions and the correspondence among the representatives for purposes of settlement are exempt from discovery and production and will not be admissible in the arbitration described below or in any lawsuit without the written concurrence of both Parties. Documents identified in or provided with

such communications that were not prepared for purposes of the negotiations are not so exempted, and, if otherwise admissible, may be admitted in evidence in the arbitration or lawsuit.

10.6 Formal Dispute Resolution

10.6.1 If the Parties are unable to resolve the dispute through the informal procedure described in Section 10.5, then either Party may invoke the formal Dispute Resolution procedures described in this Section 10.6. Unless agreed among all Parties, Formal Dispute Resolution procedures, including arbitration or other procedures as appropriate, may be invoked not earlier than sixty (60) calendar days after receipt of the letter initiating Dispute Resolution under Section 10.3.

10.6.2 Claims Subject to Mandatory Arbitration. The following claims, if not settled through Informal Dispute Resolution, will be subject to mandatory arbitration pursuant to Section 10.7 below:

10.6.2.1 Each unresolved billing dispute involving one percent (1%) or less of the amounts charged to the Disputing Party under this Agreement in the state in which the dispute arises during the twelve (12) months immediately preceding receipt of the letter initiating Dispute Resolution under Section 10.3. If the disputing Party has not been billed for a minimum of twelve (12) months immediately preceding receipt of the letter initiating Dispute Resolution under Section 10.3, the Parties will annualize the actual number of months billed.

10.6.3 Claims Subject to Elective Arbitration. Claims will be subject to elective arbitration pursuant to Section 10.7 if, and only if, the claim is not settled through Informal Dispute Resolution and both Parties agree to arbitration. If both Parties do not agree to arbitration, then either Party may proceed with any remedy available to it pursuant to law, equity or agency mechanism.

10.6.4 Claims Not Subject to Arbitration. If the following claims are not resolved through Informal Dispute Resolution, they will not be subject to arbitration and must be resolved through any remedy available to a Party pursuant to law, equity or agency mechanism.

10.6.4.1 Actions seeking a temporary restraining order or an injunction related to the purposes of this Agreement.

10.6.4.2 Actions to compel compliance with the Dispute Resolution process.

10.6.4.3 All claims arising under federal or state statute(s), including antitrust claims.

10.7 Arbitration

10.7.1 Disputes subject to mandatory or elective arbitration under the provisions of this Agreement will be submitted to a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association or pursuant to such other provider of arbitration services or rules as the Parties may agree. The arbitrator shall be knowledgeable of Telecommunications issues. Each arbitration will be held in Madison, Wisconsin as appropriate, unless the Parties agree otherwise. The arbitration hearing will be requested to commence within sixty (60) calendar days of the demand for arbitration. The arbitrator will control the scheduling so as to process the matter expeditiously. The Parties may submit written briefs upon a schedule determined by the arbitrator. The Parties will request that the arbitrator rule on the dispute by issuing a written opinion within thirty (30) calendar days after the close of hearings. The Federal Arbitration Act, 9 U.S.C. Secs. 1-16, not state law, shall govern the arbitrability of all disputes. Notwithstanding any rule of the AAA Commercial Arbitration Rules to the contrary, the Parties agree that the arbitrator will have no authority to award punitive damages, exemplary damages, Consequential Damages, multiple damages, or any other damages not measured by the prevailing Party's actual damages, and may not, in any event, make any ruling, finding or award that does not conform to the terms and conditions of this Agreement. The times specified in this Section may be extended or shortened upon mutual agreement of the Parties or by the arbitrator upon a showing of good cause. Each Party will bear its own costs of these procedures, including attorneys' fees. The Parties will equally split the fees of the arbitration and the arbitrator. The

arbitrator's award shall be final and binding and may be entered in any court having jurisdiction thereof. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction.

11. AUDITS

- 11.1 Subject to the restrictions set forth in Section 20 and except as may be otherwise expressly provided in this Agreement, a Party (the **"Auditing Party"**) may audit the other Party's (the **"Audited Party"**) books, records, data and other documents, as provided herein, once annually, with the audit period commencing not earlier than the date on which services were first supplied under this Agreement (**"service start date"**) for the purpose of evaluating (i) the accuracy of Audited Party's billing and invoicing of the services provided hereunder and (ii) verification of compliance with any provision of this Agreement that affects the accuracy of Auditing Party's billing and invoicing of the services provided to Audited Party hereunder. Notwithstanding the foregoing, an Auditing Party may audit the Audited Party's books, records and documents more than once annually if the previous audit found (i) previously uncorrected net variances or errors in invoices in Audited Party's favor with an aggregate value of at least five percent (5%) of the amounts payable by Auditing Party for audited services provided during the period covered by the audit or (ii) non-compliance by Audited Party with any provision of this Agreement affecting Auditing Party's billing and invoicing of the services provided to Audited Party with an aggregate value of at least five percent (5%) of the amounts payable by Audited Party for audited services provided during the period covered by the audit.
- 11.1.1 The scope of the audit shall be limited to the period which is the shorter of (i) the period subsequent to the last day of the period covered by the audit which was last performed (or if no audit has been performed, the service start date and (ii) the twelve (12) month period immediately preceding the date the Audited Party received notice of such requested audit, but in any event not prior to the service start date. Such audit shall begin no fewer than thirty (30) calendar days after Audited Party receives a written notice requesting an audit and shall be completed no later than thirty (30) calendar days after the start of such audit.
- 11.1.2 Such audit shall be conducted either by the Auditing Party's employee(s) or an independent auditor acceptable to both Parties; provided, however, if the Audited Party requests that an independent auditor be engaged and the Auditing Party agrees, the Audited Party shall pay one-quarter (1/4) of the independent auditor's fees and expenses. If an independent auditor is to be engaged, the Parties shall select an auditor by the thirtieth day following Audited Party's receipt of a written audit notice. Auditing Party shall cause the independent auditor to execute a nondisclosure agreement in a form agreed upon by the Parties.
- 11.1.3 Each audit shall be conducted on the premises of the Audited Party during normal business hours. Audited Party shall cooperate fully in any such audit and shall provide the auditor reasonable access to any and all appropriate Audited Party employees and any books, records and other documents reasonably necessary to assess (i) the accuracy of Audited Party's bills and (ii) Audited Party's compliance with the provisions of this Agreement that affect the accuracy of Auditing Party's billing and invoicing of the services provided to Audited Party hereunder. Audited Party may redact from the books, records and other documents provided to the auditor any Audited Party information that reveals the identity of End Users of Audited Party.
- 11.1.4 Each Party shall maintain reports, records and data relevant to the billing of any services that are the subject matter of this Agreement for a period of not less than twenty-four (24) months after creation thereof, unless a longer period is required by Applicable Law.
- 11.1.5 If any audit confirms any undercharge or overcharge, then Audited Party shall (i) promptly correct any billing error, including making refund of any overpayment by Auditing Party in the form of a credit on the invoice for the first full billing cycle after the Parties have agreed upon the accuracy of the audit results and (ii) for any undercharge caused by the actions of the Audited Party, immediately compensate Auditing Party for such undercharge, and (iii) in each case, calculate and pay interest as provided in Section 8.1.3.1 for the number of calendar days from

the date on which such undercharge or overcharge originated until the date on which such credit is issued or payment is made and available.

11.1.6 Except as may be otherwise provided in this Agreement, audits shall be performed at Auditing Party's expense, subject to reimbursement by Audited Party of one-quarter (1/4) of any independent auditor's fees and expenses in the event that an audit finds, and the Parties subsequently verify, a net adjustment in the charges paid or payable by Auditing Party hereunder by an amount that is, on an annualized basis, greater than five percent (5%) of the aggregate charges for the audited services during the period covered by the audit.

11.1.7 Any disputes concerning audit results shall be referred to the Parties' respective personnel responsible for informal resolution. If these individuals cannot resolve the dispute within thirty (30) calendar days of the referral, either Party may request in writing that an additional audit shall be conducted by an independent auditor acceptable to both Parties, subject to the requirements set out in Section 11.1. Any additional audit shall be at the requesting Party's expense.

12. DISCLAIMER OF REPRESENTATIONS AND WARRANTIES

12.1 EXCEPT AS EXPRESSLY PROVIDED UNDER THIS AGREEMENT, NO PARTY MAKES OR RECEIVES ANY WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE INTERCONNECTION, RESALE SERVICES, SECTION 251(C)(3) UNBUNDLED NETWORK ELEMENTS, FUNCTIONS, FACILITIES, PRODUCTS AND SERVICES IT PROVIDES UNDER OR IS CONTEMPLATED TO PROVIDE UNDER THIS AGREEMENT AND EACH PARTY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY AND/OR OF FITNESS FOR A PARTICULAR PURPOSE. ADDITIONALLY, NO PARTY TO THIS AGREEMENT ASSUMES RESPONSIBILITY WITH REGARD TO THE CORRECTNESS OF DATA OR INFORMATION SUPPLIED BY ANY OTHER PARTY TO THIS AGREEMENT WHEN SUCH DATA OR INFORMATION IS ACCESSED AND USED BY A THIRD PARTY.

13. LIMITATION OF LIABILITY

13.1 Except for indemnity obligations expressly set forth herein or as otherwise expressly provided in specific appendices, each Party's liability to the other Party for any Loss relating to or arising out of such Party's performance under this Agreement, including any negligent act or omission (whether willful or inadvertent), whether in contract, tort or otherwise, including alleged breaches of this Agreement and causes of action alleged to arise from allegations that breach of this Agreement also constitute a violation of a statute, including the Act, shall not exceed in total the amount SBC WISCONSIN or CLEC has charged or would have charged to the other Party for the affected Interconnection, Resale Services, Section 251(c)(3) Unbundled Network Elements, functions, facilities, products and service(s) that were not performed or were improperly performed.

13.2 Except as otherwise expressly provided in specific appendices, in the case of any Loss alleged or claimed by a Third Party to have arisen out of the negligence or willful misconduct of any Party, each Party shall bear, and its obligation shall be limited to, that portion (as mutually agreed to by the Parties or as otherwise established) of the resulting expense caused by its own negligence or willful misconduct or that of its agents, servants, contractors, or others acting in aid or concert with it.

13.3 A Party may, in its sole discretion, provide in its tariffs and contracts with its End Users or Third Parties that relate to any Interconnection, Resale Services, Section 251(c)(3) Unbundled Network Elements, functions, facilities, products and services provided or contemplated under this Agreement that, to the maximum extent permitted by Applicable Law, such Party shall not be liable to such End User or Third Party for (i) any Loss relating to or arising out of this Agreement, whether in contract, tort or otherwise, that exceeds the amount such Party would have charged the End User or Third Party for the Interconnection, Resale Services, Section 251(c)(3) Unbundled Network Elements, functions, facilities, products and services that gave rise to such Loss and (ii) any Consequential Damages. If a Party elects not to place in its tariffs or contracts such limitation(s) of liability, and the other Party incurs a

- Loss as a result thereof, the first Party shall indemnify and reimburse the other Party for that portion of the Loss that would have been limited had the first Party included in its tariffs and contracts the limitation(s) of liability described in this Section 13.3.
- 13.4 Neither CLEC nor **SBC WISCONSIN** shall be liable to the other Party for any Consequential Damages suffered by the other Party, regardless of the form of action, whether in contract, warranty, strict liability, tort or otherwise, including negligence of any kind, whether active or passive (and including alleged breaches of this Agreement and causes of action alleged to arise from allegations that breach of this Agreement constitutes a violation of the Act or other statute), and regardless of whether the Parties knew or had been advised of the possibility that such damages could result in connection with or arising from anything said, omitted, or done hereunder or related hereto, including willful acts or omissions; provided that the foregoing shall not limit a Party's obligation under Section 14 to indemnify, defend, and hold the other Party harmless against any amounts payable to a Third Party, including any Losses, and Consequential Damages of such Third Party; provided, however, that nothing in this Section 13.4 shall impose indemnity obligations on a Party for any Loss or Consequential Damages suffered by that Party's End User in connection with any affected Interconnection, Resale Services, Section 251(c)(3) Unbundled Network Elements, functions, facilities, products and services. Except as provided in the prior sentence, each Party ("**Indemnifying Party**") hereby releases and holds harmless the other Party ("**Indemnitee**") (and Indemnitee's Affiliates, and its respective officers, directors, employees and agents) against any Loss or Claim made by the Indemnifying Party's End User.
- 13.5 **SBC WISCONSIN** shall not be liable for damages to an End User's premises resulting from the furnishing of any Interconnection, Resale Services, Section 251(c)(3) Unbundled Network Elements, functions, facilities, products or services, including, if applicable, the installation and removal of equipment and associated wiring, unless the damage is caused by **SBC WISCONSIN**'s gross negligence or willful misconduct. **SBC WISCONSIN** does not guarantee or make any warranty with respect to Interconnection, Resale Services, Section 251(c)(3) Unbundled Network Elements, functions, facilities, products or services when used in an explosive atmosphere.
- 13.6 CLEC hereby releases **SBC WISCONSIN** from any and all liability for damages due to errors or omissions in CLEC's End User listing information as provided by CLEC to **SBC WISCONSIN** under this Agreement, including any errors or omissions occurring in CLEC's End User listing information as it appears in the White Pages directory, including, but not limited to, special, indirect, Consequential, punitive or incidental damages.
- 13.7 **SBC WISCONSIN** shall not be liable to CLEC, its End User or any other Person for any Loss alleged to arise out of the provision of access to 911 service or any errors, interruptions, defects, failures or malfunctions of 911 service.
- 13.8 This Section 13 is not intended to exempt any Party from all liability under this Agreement, but only to set forth the scope of liability agreed to and the type of damages that are recoverable. Both Parties acknowledge that they negotiated regarding alternate limitation of liability provisions but that such provisions would have altered the cost, and thus the price, of providing the Interconnection, Resale Services, Section 251(c)(3) Unbundled Network Elements, functions, facilities, products and services available hereunder, and no different pricing reflecting different costs and different limits of liability was agreed to.

14. INDEMNITY

- 14.1 Except as otherwise expressly provided herein or in specific appendices, each Party shall be responsible only for the Interconnection, Resale Services, Section 251(c)(3) Unbundled Network Elements, functions, facilities, products and services which are provided by that Party, its authorized agents, subcontractors, or others retained by such Parties, and neither Party shall bear any responsibility for the Interconnection, Resale Services, Section 251(c)(3) Unbundled Network Elements, functions, facilities, products and services provided by the other Party, its agents, subcontractors, or others retained by such Parties.

- 14.2 Except as otherwise expressly provided herein or in specific appendices, and to the extent not prohibited by Applicable Law and not otherwise controlled by tariff, each Party (the "**Indemnifying Party**") shall release, defend and indemnify the other Party (the "**Indemnified Party**") and hold such Indemnified Party harmless against any Loss to a Third Party arising out of the negligence or willful misconduct ("**Fault**") of such Indemnifying Party, its agents, its End Users, contractors, or others retained by such Parties, in connection with the Indemnifying Party's provision of Interconnection, Resale Services, Section 251(c)(3) Unbundled Network Elements, functions, facilities, products and services under this Agreement; provided, however, that (i) with respect to employees or agents of the Indemnifying Party, such Fault occurs while performing within the scope of their employment, (ii) with respect to subcontractors of the Indemnifying Party, such Fault occurs in the course of performing duties of the subcontractor under its subcontract with the Indemnifying Party, and (iii) with respect to the Fault of employees or agents of such subcontractor, such Fault occurs while performing within the scope of their employment by the subcontractor with respect to such duties of the subcontractor under the subcontract.
- 14.3 In the case of any Loss alleged or claimed by a End User of either Party, the Party whose End User alleged or claimed such Loss (the "**Indemnifying Party**") shall defend and indemnify the other Party (the "**Indemnified Party**") against any and all such Claims or Losses by its End User regardless of whether the underlying Interconnection, Resale Service, Section 251(c)(3) Unbundled Network Element, function, facility, product or service giving rise to such Claim or Loss was provided or provisioned by the Indemnified Party, unless the Claim or Loss was caused by the gross negligence or willful misconduct of the Indemnified Party.
- 14.4 A Party (the "**Indemnifying Party**") shall defend, indemnify and hold harmless the other Party ("**Indemnified Party**") against any Claim or Loss arising from the Indemnifying Party's use of Interconnection, Resale Services, Section 251(c)(3) Unbundled Network Elements, functions, facilities, products and services provided under this Agreement involving:
- 14.4.1 Any Claim or Loss arising from such Indemnifying Party's use of Interconnection, Resale Services, Section 251(c)(3) Unbundled Network Elements, functions, facilities, products and services offered under this Agreement, involving any Claim for libel, slander, invasion of privacy, or infringement of Intellectual Property rights arising from the Indemnifying Party's or its End User's use.
- 14.4.1.1 The foregoing includes any Claims or Losses arising from disclosure of any End User-specific information associated with either the originating or terminating numbers used to provision Interconnection, Resale Services, Section 251(c)(3) Unbundled Network Elements, functions, facilities, products or services provided hereunder and all other Claims arising out of any act or omission of the End User in the course of using any Interconnection, Resale Services, Section 251(c)(3) Unbundled Network Elements, functions, facilities, products or services provided pursuant to this Agreement.
- 14.4.1.2 The foregoing includes any Losses arising from Claims for actual or alleged infringement of any Intellectual Property right of a Third Party to the extent that such Loss arises from an Indemnifying Party's or an Indemnifying Party's End User's use of Interconnection, Resale Services, Section 251(c)(3) Unbundled Network Elements, functions, facilities, products or services provided under this Agreement; provided, however, that an Indemnifying Party's obligation to defend and indemnify the Indemnified Party shall not apply:
- 14.4.1.2.1 where an Indemnified Party or its End User modifies Interconnection, Resale Services, Section 251(c)(3) Unbundled Network Elements, functions, facilities, products or services; provided under this Agreement; and
- 14.4.1.2.2 no infringement would have occurred without such modification.
- 14.4.2 Any and all penalties imposed on either Party because of the Indemnifying Party's failure to comply with the Communications Assistance to Law Enforcement Act of 1994 (**CALEA**);

provided that the Indemnifying Party shall also, at its sole cost and expense, pay any amounts necessary to modify or replace any equipment, facilities or services provided to the Indemnified Party under this Agreement to ensure that such equipment, facilities and services fully comply with CALEA.

- 14.5 CLEC acknowledges that its right under this Agreement to Interconnect with SBC WISCONSIN's network and to unbundle and/or combine SBC WISCONSIN's Section 251(c)(3) Unbundled Network Elements (including combining with CLEC's Network Elements) may be subject to or limited by Intellectual Property rights (including without limitation, patent, copyright, trade secret, trade mark, service mark, trade name and trade dress rights) and contract rights of Third Parties.

14.5.1 The Parties acknowledge that on April 27, 2000, the FCC released its Memorandum Opinion and Order in CC Docket No. 96-98 (File No. CCBPol. 97-4), In the Matter of Petition of MCI *for Declaratory Ruling*. The Parties further acknowledge and agree that by executing this Agreement, neither Party waives any of its rights, remedies, or arguments with respect to such decision and any remand thereof, including its right to seek legal review or a stay pending appeal of such decision.

14.5.1.1 SBC WISCONSIN agrees to use its best efforts to obtain for CLEC, under commercially reasonable terms, Intellectual Property rights to each Section 251(c)(3) UNE necessary for CLEC to use such Section 251(c)(3) UNE in the same manner as SBC WISCONSIN.

14.5.1.2 SBC WISCONSIN shall have no obligation to attempt to obtain for CLEC any Intellectual Property right(s) that would permit CLEC to use any Section 251(c)(3) UNE in a different manner than used by SBC WISCONSIN.

14.5.1.3 To the extent not prohibited by a contract with the vendor of the network element sought by CLEC that contains Intellectual Property licenses, SBC WISCONSIN shall reveal to CLEC the name of the vendor, the Intellectual Property rights licensed to SBC WISCONSIN under the vendor contract and the terms of the contract (excluding cost terms). SBC WISCONSIN shall, at CLEC's request, contact the vendor to attempt to obtain permission to reveal additional contract details to CLEC.

14.5.1.4 All costs associated with the extension of Intellectual Property rights to CLEC pursuant to Section 14.5.1.1, including the cost of the license extension itself and the costs associated with the effort to obtain the license, shall be a part of the cost of providing the Section 251(c)(3) UNE to which the Intellectual Property rights relate and apportioned to all requesting carriers using that Section 251(c)(3) UNE including SBC WISCONSIN.

14.5.2 SBC WISCONSIN hereby conveys no licenses to use such Intellectual Property rights and makes no warranties, express or implied, concerning CLEC's (or any Third Parties') rights with respect to such Intellectual Property rights and contract rights, including whether such rights will be violated by such Interconnection or unbundling and/or combining of Section 251(c)(3) Unbundled Network Elements (including combining with CLEC's Network Elements) in SBC WISCONSIN's network or CLEC's use of other functions, facilities, products or services furnished under this Agreement. Any licenses or warranties for Intellectual Property rights associated with Section 251(c)(3) UNEs are vendor licenses and warranties and are a part of the Intellectual Property rights SBC WISCONSIN agrees in Section 14.5.1.1 to use its best efforts to obtain.

14.5.3 SBC WISCONSIN does not and shall not indemnify, defend or hold CLEC harmless, nor be responsible for indemnifying or defending, or holding CLEC harmless, for any Claims or Losses for actual or alleged infringement of any Intellectual Property right or interference with or violation of any contract right that arises out of, is caused by, or relates to CLEC's Interconnection with SBC WISCONSIN's network and unbundling and/or combining SBC WISCONSIN's Section 251(c)(3) Unbundled Network Elements (including combining with CLEC's Network Elements) or

CLEC's use of other functions, facilities, products or services furnished under this Agreement. Any indemnities for Intellectual Property rights associated with Section 251(c)(3) UNEs shall be vendor's indemnities and are a part of the Intellectual Property rights **SBC WISCONSIN** agrees in Section 14.5.1.1 to use its best efforts to obtain.

- 14.6 CLEC shall reimburse **SBC WISCONSIN** for damages to **SBC WISCONSIN**'s facilities utilized to provide Interconnection or Section 251(c)(3) UNEs hereunder caused by the negligence or willful act of CLEC, its agents or subcontractors or CLEC's End User or resulting from CLEC's improper use of **SBC WISCONSIN**'s facilities, or due to malfunction of any facilities, functions, products, services or equipment provided by any person or entity other than **SBC WISCONSIN**. Upon reimbursement for damages, **SBC WISCONSIN** will cooperate with CLEC in prosecuting a claim against the person causing such damage. CLEC shall be subrogated to the right of recovery by **SBC WISCONSIN** for the damages to the extent of such payment.
- 14.7 Notwithstanding any other provision in this Agreement, each Party agrees that should it cause any non-standard digital subscriber line ("xDSL") technologies (as that term is defined in the applicable XDSL and Line Splitting Appendix and/or the applicable commission-ordered tariff, as appropriate) to be deployed or used in connection with or on **SBC WISCONSIN** facilities, that Party ("**Indemnifying Party**") will pay all costs associated with any damage, service interruption or other Telecommunications Service degradation, or damage to the other Party's ("**Indemnitee's**") facilities.

14.8 Indemnification Procedures

- 14.8.1 Whenever a claim shall arise for indemnification under this Section 14, the relevant Indemnified Party, as appropriate, shall promptly notify the Indemnifying Party and request in writing the Indemnifying Party to defend the same. Failure to so notify the Indemnifying Party shall not relieve the Indemnifying Party of any liability that the Indemnifying Party might have, except to the extent that such failure prejudices the Indemnifying Party's ability to defend such claim.
- 14.8.2 The Indemnifying Party shall have the right to defend against such liability or assertion, in which event the Indemnifying Party shall give written notice to the Indemnified Party of acceptance of the defense of such claim and the identity of counsel selected by the Indemnifying Party.
- 14.8.3 Until such time as Indemnifying Party provides written notice of acceptance of the defense of such claim, the Indemnified Party shall defend such claim, at the expense of the Indemnifying Party, subject to any right of the Indemnifying Party to seek reimbursement for the costs of such defense in the event that it is determined that Indemnifying Party had no obligation to indemnify the Indemnified Party for such claim.
- 14.8.4 Upon accepting the defense, the Indemnifying Party shall have exclusive right to control and conduct the defense and settlement of any such claims, subject to consultation with the Indemnified Party. So long as the Indemnifying Party is controlling and conducting the defense, the Indemnifying Party shall not be liable for any settlement by the Indemnified Party unless such Indemnifying Party has approved such settlement in advance and agrees to be bound by the agreement incorporating such settlement.
- 14.8.5 At any time, an Indemnified Party shall have the right to refuse a compromise or settlement, and, at such refusing Party's cost, to take over such defense; provided that, in such event the Indemnifying Party shall not be responsible for, nor shall it be obligated to indemnify the refusing Party against, any cost or liability in excess of such refused compromise or settlement.
- 14.8.6 With respect to any defense accepted by the Indemnifying Party, the Indemnified Party will be entitled to participate with the Indemnifying Party in such defense if the claim requests equitable relief or other relief that could affect the rights of the Indemnified Party, and shall also be entitled to employ separate counsel for such defense at such Indemnified Party's expense.
- 14.8.7 If the Indemnifying Party does not accept the defense of any indemnified claim as provided above, the Indemnified Party shall have the right to employ counsel for such defense at the expense of the Indemnifying Party.

14.8.8 In the event of a failure to assume the defense, the Indemnified Party may negotiate a settlement, which shall be presented to the Indemnifying Party. If the Indemnifying Party refuses to agree to the presented settlement, the Indemnifying Party may take over the defense. If the Indemnifying Party refuses to agree to the presented settlement and refuses to take over the defense, the Indemnifying Party shall be liable for any reasonable cash settlement not involving any admission of liability by the Indemnifying Party, though such settlement may have been made by the Indemnified Party without approval of the Indemnifying Party, it being the Parties' intent that no settlement involving a non-monetary concession by the Indemnifying Party, including an admission of liability by such Party, shall take effect without the written approval of the Indemnifying Party.

14.8.9 Each Party agrees to cooperate and to cause its employees and agents to cooperate with the other Party in the defense of any such claim and the relevant records of each Party shall be available to the other Party with respect to any such defense, subject to the restrictions and limitations set forth in Section 20.

15. PERFORMANCE MEASURES

15.1 Appendix Performance Measures provides monetary payments for failure to meet specified performance standards. The provisions of that Appendix constitute the sole obligation of **SBC WISCONSIN** to pay damages or financial penalties for failure to meet specified performance standards identified in such Appendix to this Agreement.

16. INTELLECTUAL PROPERTY

16.1 Any Intellectual Property originating from or developed by a Party shall remain in the exclusive ownership of that Party.

17. NOTICES

17.1 Subject to Section 17.2, notices given by one Party to the other Party under this Agreement shall be in writing (unless specifically provided otherwise herein), and unless otherwise expressly required by this Agreement to be delivered to another representative or point of contact, shall be

17.1.1 delivered personally;

17.1.2 delivered by express overnight delivery service;

17.1.3 mailed, via certified mail or first class U.S. Postal Service, with postage prepaid, and a return receipt requested; or

17.1.4 delivered by facsimile; provided that a paper copy is also sent by a method described in sections 17.1.1, 17.1.2, or 17.1.3.

17.1.5 Notices will be deemed given as of the earliest of:

17.1.5.1 the date of actual receipt,

17.1.5.2 the next Business Day when sent via express overnight delivery service,

17.1.5.3 five (5) calendar days after mailing in the case of first class or certified U.S. Postal Service, or

17.1.5.4 on the date set forth on the confirmation produced by the sending facsimile machine when delivered by facsimile prior to 5:00 p.m. in the recipient's time zone, but the next Business Day when delivered by facsimile at 5:00 p.m. or later in the recipient's time zone.

17.1.6 Notices will be addressed to the Parties as follows:

NOTICE CONTACT	24-7 Telcom, Inc. CONTACT	SBC WISCONSIN CONTACT
NAME/TITLE	Randy Siler, General Manager	Contract Management ATTN: Notices Manager
STREET ADDRESS	912 Crescent Street	311 S. Akard, 9 th Floor Four SBC Plaza
CITY, STATE, ZIP CODE	Menomonie, Wisconsin 54751	Dallas, TX 75202-5398
FACSIMILE NUMBER	715-231-2407	214-464-2006

17.1.7 Either Party may unilaterally change its designated contact, address, telephone number and/or facsimile number for the receipt of notices by giving written notice to the other Party in compliance with this Section. Any notice to change the designated contact, address, telephone and/or facsimile number for the receipt of notices shall be deemed effective ten (10) calendar days following receipt by the other Party.

- 17.2 **SBC WISCONSIN** communicates official information to CLECs via its Accessible Letter notification process. This process covers a variety of subjects, including updates on products/services promotions; deployment of new products/services; modifications and price changes to existing products/services; cancellation or retirement of existing products/services; and operational issues. Changes to this process will be developed through the CLEC User Forum process and will be implemented only with the concurrence of the CLEC User Forum Global Issues group.
- 17.3 In the **SBC WISCONSIN**'s Accessible Letter notification will be via electronic mail ("e-mail") distribution. Accessible Letter notification via e-mail will be deemed given as of the date set forth on the e-mail message.
- 17.4 In **SBC WISCONSIN** CLEC may designate up to a maximum of ten (10) recipients for Accessible Letter notification via e-mail.

18. PUBLICITY AND USE OF TRADEMARKS OR SERVICE MARKS

- 18.1 Neither Party nor its subcontractors or agents shall use in any advertising or sales promotion, press releases, or other publicity matters any endorsements, direct or indirect quotes, or pictures that imply endorsement by the other Party or any of its employees without such first Party's prior written approval. The Parties will submit to each other for written approval, prior to publication, all publicity matters that mention or display one another's name and/or marks or contain language from which a connection to said name and/or marks may be inferred or implied; the Party to whom a request is directed shall respond promptly. Nothing herein, however, shall be construed as preventing either Party from publicly stating the fact that it has executed this Agreement with the other Party.
- 18.2 Nothing in this Agreement shall grant, suggest, or imply any authority for one Party to use the name, trademarks, service marks, logos, proprietary trade dress or trade names of the other Party in any advertising, press releases, publicity matters, marketing and/or promotional materials or for any other commercial purpose without prior written approval from such other Party.

19. NO LICENSE

- 19.1 Except at otherwise expressly provided in this Agreement, no license under patents, copyrights or any other Intellectual Property right (other than the limited license to use consistent with the terms, conditions and restrictions of this Agreement) is granted by either Party or shall be implied or arise by estoppel with respect to any transactions contemplated under this Agreement.

20. CONFIDENTIALITY

- 20.1 Both Parties agree to treat Proprietary Information received from the other in accordance with the provisions of Section 222 of the Act.

- 20.2 Unless otherwise agreed, the obligations of confidentiality and non-use do not apply to such Proprietary Information that:
- 20.2.1 Was at the time of receipt, already known to the Receiving Party, free of any obligation to keep confidential and evidenced by written records prepared prior to delivery by the Disclosing Party; or
 - 20.2.2 Is, or becomes publicly known through no wrongful act of the Receiving Party; or
 - 20.2.3 Is rightfully received from a Third Party having no direct or indirect secrecy or confidentiality obligation to the Disclosing Party with respect to such information; provided that such Receiving Party has exercised commercially reasonable efforts to determine whether such Third Party has any such obligation; or
 - 20.2.4 Is independently developed by an agent, employee representative or Affiliate of the Receiving Party and such Party is not involved in any manner with the provision of services pursuant to this Agreement and does not have any direct or indirect access to the Proprietary Information; or
 - 20.2.5 Is disclosed to a Third Party by the Disclosing Party without similar restrictions on such Third Party's rights; or
 - 20.2.6 Is approved for release by written authorization of the Disclosing Party, but only to the extent of the authorization granted; or
 - 20.2.7 Is required to be made public or disclosed by the Receiving Party pursuant to Applicable Law or regulation or court order or Section 251(c)(3) process.

21. INTERVENING LAW

- 21.1 This Agreement is the result of negotiations between the Parties and may incorporate certain provisions that resulted from arbitration by the appropriate state Commission(s). In entering into this Agreement and any Amendments to such Agreement and carrying out the provisions herein, neither Party waives, but instead expressly reserves, all of its rights, remedies and arguments with respect to any orders, decisions, legislation or proceedings and any remands thereof and any other federal or state regulatory, legislative or judicial action(s), including, without limitation, its intervening law rights relating to the following actions, which the Parties have not yet fully incorporated into this Agreement or which may be the subject of further government review: *Verizon v. FCC*, *et. al*, 535 U.S. 467 (2002); *USTA, et. al v. FCC*, 290 F.3d 415 (D.C. Cir. 2002) and following remand and appeal, *USTA v. FCC*, 359 F.3d 554 (D.C. Cir. 2004); the FCC's Triennial Review Order, CC Docket Nos. 01-338, 96-98 and 98-147 (FCC 03-36) including, without limitation, the FCC's MDU Reconsideration Order (FCC 04-191) (rel. Aug. 9, 2004) and the FCC's Order on Reconsideration (FCC 04-248) (rel. Oct. 18, 2004), and the FCC's Biennial Review Proceeding; the FCC's Order on Remand (FCC 04-290), WC Docket No. 04-312 and CC Docket No. 01-338 (rel. Feb. 4, 2005) ("TRO Remand Order"); the FCC's Supplemental Order Clarification (FCC 00-183) (rel. June 2, 2000), in CC Docket 96-98; and the FCC's Order on Remand and Report and Order in CC Dockets No. 96-98 and 99-68, 16 FCC Rcd 9151 (2001), (rel. April 27, 2001), which was remanded in *WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002), and as to the FCC's Notice of Proposed Rulemaking as to Intercarrier Compensation, CC Docket 01-92 (Order No. 01-132) (rel. April 27, 2001) (collectively "Government Actions"). Notwithstanding anything to the contrary in this Agreement (including any amendments to this Agreement), **SBC WISCONSIN** shall have no obligation to provide UNEs, combinations of UNEs, combinations of UNE(s) and CLEC's own elements or UNEs in commingled arrangements beyond those required by the Act, including the Section 251(c)(3) and effective FCC rules and associated FCC and judicial orders. Except to the extent that **SBC WISCONSIN** has adopted the FCC ISP terminating compensation plan ("FCC Plan") in an **SBC WISCONSIN** state in which this Agreement is effective, and the Parties have incorporated rates, terms and conditions associated with the FCC Plan into this Agreement, these rights also include but are not limited to **SBC WISCONSIN**'s right to exercise its option at any time to adopt on a date specified by **SBC WISCONSIN** the FCC Plan, after which date ISP-bound traffic will be subject to the FCC Plan's prescribed terminating compensation rates, and other terms and conditions, and seek

conforming modifications to this Agreement. If any action by any state or federal regulatory or legislative body or court of competent jurisdiction invalidates, modifies, or stays the enforcement of laws or regulations that were the basis or rationale for any rate(s), term(s) and/or condition(s) ("Provisions") of the Agreement and/or otherwise affects the rights or obligations of either Party that are addressed by this Agreement, specifically including but not limited to those arising with respect to the Government Actions, the affected Provision(s) shall be immediately invalidated, modified or stayed consistent with the action of the regulatory or legislative body or court of competent jurisdiction upon the written request of either Party ("Written Notice"). With respect to any Written Notices hereunder, the Parties shall have sixty (60) days from the Written Notice to attempt to negotiate and arrive at an agreement on the appropriate conforming modifications to the Agreement. If the Parties are unable to agree upon the conforming modifications required within sixty (60) days from the Written Notice, any disputes between the Parties concerning the interpretation of the actions required or the provisions affected by such order shall be resolved pursuant to the dispute resolution process provided for in this Agreement.

22. GOVERNING LAW

- 22.1 Unless otherwise provided by Applicable Law, this Agreement shall be governed by and construed in accordance with the Act, the FCC Rules and Regulations interpreting the Act and other applicable federal law. To the extent that federal law would apply state law in interpreting this Agreement, the domestic laws of the state in which the Interconnection, Resale Services, Section 251(c)(3) Unbundled Network Elements, functions, facilities, products and services at issue are furnished or sought shall apply, without regard to that state's conflict of laws principles. The Parties submit to personal jurisdiction in Madison, Wisconsin, and waive any and all objection to any such venue.

23. REGULATORY APPROVAL

- 23.1 The Parties understand and agree that this Agreement and any amendment or modification hereto will be filed with the Commission for approval in accordance with Section 252 of the Act and may thereafter be filed with the FCC. The Parties believe in good faith and agree that the services to be provided under this Agreement are in the public interest. Each Party covenants and agrees to fully support approval of this Agreement by the Commission or the FCC under Section 252 of the Act without modification.

24. CHANGES IN END USER LOCAL EXCHANGE SERVICE PROVIDER SELECTION

- 24.1.1 Each Party will abide by applicable federal and state laws and regulations in obtaining End User authorization prior to changing an End User's Local Exchange Carrier to itself and in assuming responsibility for any applicable charges as specified in the FCC's rules regarding Subscriber Carrier Selection Changes (47 CFR 64.1100 through 64.1170) and any applicable state regulation. Each Party shall deliver to the other Party a representation of authorization that applies to all orders submitted by a Party under this Agreement requiring a LEC change. A Party's representation of authorization shall be delivered to the other Party prior to the first order submitted to the other Party. Each Party shall retain on file all applicable letters and other documentation of authorization relating to its End User's selection of such Party as its LEC, which documentation shall be available for inspection by the other Party at its request during normal business hours and at no charge.
- 24.1.2 Only an End User can initiate a challenge to a change in its LEC. If an End User notifies one Party that the End User requests local exchange service, and the other Party is such End User's LEC, then the Party receiving such request shall be free to immediately access such End User's CPNI subject to the requirements of the applicable Appendix OSS restricting access to CPNI in order to immediately provide service to such End User.
- 24.1.3 When an End User changes or withdraws authorization from its LEC, each Party shall release End User-specific facilities belonging to the ILEC in accordance with the End User's direction or that of the End User's authorized agent. Further, when an End User abandons its premise (that

is, its place of business or domicile), SBC WISCONSIN is free to reclaim the Section 251(c)(3) UNE facilities for use by another End User and is free to issue service orders required to reclaim such facilities.

24.1.4 Neither Party shall be obligated by this Agreement to investigate any allegations of unauthorized changes in local exchange service (slamming) at the request of the other Party; provided, however, that each Party shall cooperate with any investigation of a complaint alleging an unauthorized change in local exchange service at the request of the FCC or the applicable state Commission.

24.1.5 The Parties agree to the re-use of existing network facilities when an End User changes its provider of local exchange service and the network facilities are provided by the same network provider and if technically feasible.

25. COMPLIANCE AND CERTIFICATION

25.1 Each Party shall comply at its own expense with all Applicable Laws that relate to that Party's obligations to the other Party under this Agreement. Nothing in this Agreement shall be construed as requiring or permitting either Party to contravene any mandatory requirement of Applicable Law.

25.2 Each Party warrants that it has obtained all necessary state certification required in each state covered by this Agreement prior to ordering any Interconnection, Resale Services, Section 251(c)(3) Unbundled Network Elements, functions, facilities, products and services from the other Party pursuant to this Agreement. Upon request, each Party shall provide proof of certification.

25.3 Each Party shall be responsible for obtaining and keeping in effect all approvals from, and rights granted by, Governmental Authorities, building and property owners, other carriers, and any other Third Parties that may be required in connection with the performance of its obligations under this Agreement.

25.4 Each Party represents and warrants that any equipment, facilities or services provided to the other Party under this Agreement comply with the CALEA.

26. LAW ENFORCEMENT

26.1 SBC WISCONSIN and CLEC shall reasonably cooperate with the other Party in handling law enforcement requests as follows:

26.1.1 Intercept Devices:

26.1.1.1 Local and federal law enforcement agencies periodically request information or assistance from local telephone service providers. When either Party receives a request associated with an End User of the other Party, it shall refer such request to the Party that serves such End User, unless the request directs the receiving Party to attach a pen register, trap-and-trace or form of intercept on the Party's facilities, in which case that Party shall comply with any valid request.

26.1.2 Subpoenas:

26.1.2.1 If a Party receives a subpoena for information concerning an End User the Party knows to be an End User of the other Party, it shall refer the subpoena to the Requesting Party with an indication that the other Party is the responsible company, unless the subpoena requests records for a period of time during which the receiving Party was the End User's service provider, in which case that Party will respond to any valid request.

26.1.3 Emergencies:

26.1.3.1 If a Party receives a request from a law enforcement agency for a temporary number change, temporary disconnect, or one-way denial of outbound calls by the receiving Party's switch for an End User of the other Party, that receiving Party will comply with a

valid emergency request. However, neither Party shall be held liable for any claims or Losses arising from compliance with such requests on behalf of the other Party's End User and the Party serving such End User agrees to indemnify and hold the other Party harmless against any and all such Claims or Losses.

27. RELATIONSHIP OF THE PARTIES/INDEPENDENT CONTRACTOR

- 27.1 Each Party is an independent contractor, and has and hereby retains the right to exercise full control of and supervision over its own performance of its obligations under this Agreement and retains full control over the employment, direction, compensation and discharge of its employees assisting in the performance of such obligations. Each Party and each Party's contractor(s) shall be solely responsible for all matters relating to payment of such employees, including the withholding or payment of all applicable federal, state and local income taxes, social security taxes and other payroll taxes with respect to its employees, as well as any taxes, contributions or other obligations imposed by applicable state unemployment or workers' compensation acts and all other regulations governing such matters. Each Party has sole authority and responsibility to hire, fire and otherwise control its employees.
- 27.2 Nothing contained herein shall constitute the Parties as joint venturers, partners, employees or agents of one another, and neither Party shall have the right or power to bind or obligate the other. Nothing herein will be construed as making either Party responsible or liable for the obligations and undertakings of the other Party. Except for provisions herein expressly authorizing a Party to act for another, nothing in this Agreement shall constitute a Party as a legal representative or agent of the other Party, nor shall a Party have the right or authority to assume, create or incur any liability or any obligation of any kind, express or implied, against or in the name or on behalf of the other Party unless otherwise expressly permitted by such other Party. Except as otherwise expressly provided in this Agreement, no Party undertakes to perform any obligation of the other Party, whether regulatory or contractual, or to assume any responsibility for the management of the other Party's business.

28. NO THIRD PARTY BENEFICIARIES; DISCLAIMER OF AGENCY

- 28.1 This Agreement is for the sole benefit of the Parties and their permitted assigns, and nothing herein expressed or implied shall create or be construed to create any Third Party beneficiary rights hereunder. This Agreement shall not provide any Person not a party hereto with any remedy, claim, liability, reimbursement, cause of action, or other right in excess of those existing without reference hereto.

29. INTENTIONALLY LEFT BLANK

30. SUBCONTRACTING

- 30.1 If either Party retains or engages any subcontractor to perform any of that Party's obligations under this Agreement, each Party will remain fully responsible for the performance of this Agreement in accordance with its terms, including any obligations either Party performs through subcontractors.
- 30.2 Each Party will be solely responsible for payments due that Party's subcontractors.
- 30.3 No subcontractor will be deemed a Third Party beneficiary for any purposes under this Agreement.
- 30.4 No contract, subcontract or other agreement entered into by either Party with any Third Party in connection with the provision of Interconnection, Resale Services, Section 251(c)(3) Unbundled Network Elements, functions, facilities, products and services hereunder will provide for any indemnity, guarantee or assumption of liability by the other Party to this Agreement with respect to such arrangement, except as consented to in writing by the other Party.
- 30.5 Any subcontractor that gains access to Customer Proprietary Network Information ("CPNI") or Proprietary Information covered by this Agreement shall be required by the subcontracting Party to protect such CPNI or Proprietary Information to the same extent the subcontracting Party is required to protect such CPNI or Proprietary Information under the terms of this Agreement.

31. RESPONSIBILITY FOR ENVIRONMENTAL CONTAMINATION

- 31.1 Each Party shall be solely responsible at its own expense for the proper handling, use, removal, excavation, storage, treatment, transport, disposal, or any other management by such Party or any person acting on its behalf of all Hazardous Substances and Environmental Hazards introduced to the affected work location and will perform such activities in accordance with Applicable Law.
- 31.2 Notwithstanding anything to the contrary in this Agreement and to the fullest extent permitted by Applicable Law, SBC WISCONSIN shall, at CLEC's request, indemnify, defend, and hold harmless CLEC, each of its officers, directors and employees from and against any losses, damages, costs, fines, penalties and expenses (including reasonable attorneys and consultant's fees) of every kind and nature to the extent they are incurred by any of those Parties in connection with a claim, demand, suit, or proceeding for damages, penalties, contribution, injunction, or any other kind of relief that is based upon, arises out of, is caused by, or results from: (i) the removal or disposal from the work location of a Hazardous Substance by SBC WISCONSIN or any person acting on behalf of SBC WISCONSIN, or the subsequent storage, processing, or other handling of such Hazardous Substances after they have been removed from the work location, (ii) the Release of a Hazardous Substance, regardless of its source, by SBC WISCONSIN or any person acting on behalf of SBC WISCONSIN, or (iii) the presence at the work location of an Environmental Hazard for which SBC WISCONSIN is responsible under Applicable Law or a Hazardous Substance introduced into the work location by SBC WISCONSIN or any person acting on behalf of SBC WISCONSIN.
- 31.3 Notwithstanding anything to the contrary in this Agreement and to the fullest extent permitted by Applicable Law, CLEC shall, at SBC WISCONSIN's request, indemnify, defend, and hold harmless SBC WISCONSIN, each of its officers, directors and employees from and against any losses, damages, costs, fines, penalties and expenses (including reasonable attorney's and consultant's fees) of every kind and nature to the extent they are incurred by any of those parties in connection with a claim, demand, suit, or proceeding for damages, penalties, contribution, injunction, or any other kind of relief that is based upon, arises out of, is caused by, or results from: (i) the removal or disposal of a Hazardous Substance from the work location by CLEC or any person acting on behalf of CLEC, or the subsequent storage, processing, or other handling of such Hazardous Substances after they have been removed from the work location, (ii) the Release of a Hazardous Substance, regardless of its source, by CLEC or any person acting on behalf of CLEC, or (iii) the presence at the work location of an Environmental Hazard for which CLEC is responsible under Applicable Law or a Hazardous Substance introduced into the work location by CLEC or any person acting on behalf of CLEC.
- 31.4 For the purposes of this agreement, "Hazardous Substances" means (i) any material or substance that is defined or classified as a hazardous substance, hazardous waste, hazardous material, hazardous chemical, pollutant, or contaminant under any federal, state, or local environmental statute, rule, regulation, ordinance or other Applicable Law dealing with the protection of human health or the environment, (ii) petroleum, oil, gasoline, natural gas, fuel oil, motor oil, waste oil, diesel fuel, jet fuel, and other petroleum hydrocarbons, or (iii) asbestos and asbestos containing material in any form, and (iv) any soil, groundwater, air, or other media contaminated with any of the materials or substances described above.
- 31.5 For the purposes of this agreement, "Environmental Hazard" means (i) the presence of petroleum vapors or other gases in hazardous concentrations in a manhole or other confined space, or conditions reasonably likely to give rise to such concentrations, (ii) asbestos containing materials, or (iii) any potential hazard that would not be obvious to an individual entering the work location or detectable using work practices standard in the industry.
- 31.6 For the purposes of this agreement, "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, disposal, or other movement into (i) the work location, or (ii) other environmental media, including but not limited to, the air, ground or surface water, or soil.

32. FORCE MAJEURE

- 32.1 No Party shall be responsible for delays or failures in performance of any part of this Agreement (other than an obligation to make money payments) resulting from acts or occurrences beyond the reasonable control of such Party, including acts of nature, acts of civil or military authority, any law, order, regulation, ordinance of any Governmental Authority, embargoes, epidemics, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, hurricanes, floods, work stoppages, equipment failures, cable cuts, power blackouts, volcanic action, other major environmental disturbances, unusually severe weather conditions, inability to secure products or services of other persons or transportation facilities or acts or omissions of transportation carriers (individually or collectively, a “**Force Majeure Event**”) or any Delaying Event caused by the other Party or any other circumstances beyond the Party’s reasonable control. If a Force Majeure Event shall occur, the Party affected shall give prompt notice to the other Party of such Force Majeure Event specifying the nature, date of inception and expected duration of such Force Majeure Event, whereupon such obligation or performance shall be suspended to the extent such Party is affected by such Force Majeure Event during the continuance thereof or be excused from such performance depending on the nature, severity and duration of such Force Majeure Event (and the other Party shall likewise be excused from performance of its obligations to the extent such Party’s obligations relate to the performance so interfered with). The affected Party shall use its reasonable efforts to avoid or remove the cause of nonperformance and the Parties shall give like notice and proceed to perform with dispatch once the causes are removed or cease.

33. TAXES

- 33.1 Each Party purchasing Interconnection, Resale Services, Section 251(c)(3) Unbundled Network Elements, functions, facilities, products and services under this Agreement shall pay or otherwise be responsible for all federal, state, or local sales, use, excise, gross receipts, municipal fees, transfer, transaction or similar taxes, fees, or surcharges (hereinafter “Tax”) imposed on, or with respect to, the Interconnection, Resale Services, Section 251(c)(3) Unbundled Network Elements, functions, facilities, products and services under this Agreement provided by or to such Party, except for (a) any Tax on either party’s corporate existence, status, or income or (b) any corporate franchise Taxes. Whenever possible, Taxes shall be billed as a separate item on the invoice.
- 33.2 INTENTIONALLY LEFT BLANK
- 33.3 With respect to any purchase of Interconnection, Resale Services, Section 251(c)(3) Unbundled Network Elements, functions, facilities, products and services under this Agreement if any Tax is required or permitted by Applicable Law to be collected from the purchasing Party by the providing Party, then: (i) the providing Party shall bill the purchasing Party for such Tax; (ii) the purchasing Party shall remit such Tax to the providing Party; and (iii) the providing Party shall remit such collected Tax to the applicable taxing authority. Failure to include Taxes on an invoice or to state a Tax separately shall not impair the obligation of the purchasing Party to pay any Tax. Nothing shall prevent the providing Party from paying any Tax to the appropriate taxing authority prior to the time: (i) it bills the purchasing Party for such Tax, or (ii) it collects the Tax from the purchasing Party. Notwithstanding anything in this Agreement to the contrary, the purchasing Party shall be liable for and the providing Party may collect Taxes which were assessed by or paid to an appropriate taxing authority within the statute of limitations period but not included on an invoice within four (4) years after the Tax otherwise was owed or due.
- 33.4 With respect to any purchase hereunder of Interconnection, Resale Services, Section 251(c)(3) Unbundled Network Elements, functions, facilities, products and services under this Agreement that are resold to a third party, if any Tax is imposed by Applicable Law on the End User in connection with any such purchase, then: (i) the purchasing Party shall be required to impose and/or collect such Tax from the End User; and (ii) the purchasing Party shall remit such Tax to the applicable taxing authority. The purchasing Party agrees to indemnify and hold harmless the providing Party for any costs incurred by the providing Party as a result of actions taken by the applicable taxing authority to collect the Tax from

- the providing Party due to the failure of the purchasing Party to pay or collect and remit such tax to such authority.
- 33.5 If the providing Party fails to bill or to collect any Tax as required herein, then, as between the providing Party and the purchasing Party: (i) the purchasing Party shall remain liable for such uncollected Tax; and (ii) the providing Party shall be liable for any penalty and interest assessed with respect to such uncollected Tax by such authority. However, if the purchasing Party fails to pay any Taxes properly billed, then, as between the providing Party and the purchasing Party, the purchasing Party will be solely responsible for payment of the Taxes, penalty and interest.
- 33.6 If the purchasing Party fails to impose and/or collect any Tax from End Users as required herein, then, as between the providing Party and the purchasing Party, the purchasing Party shall remain liable for such uncollected Tax and any interest and penalty assessed thereon with respect to the uncollected Tax by the applicable taxing authority. With respect to any Tax that the purchasing Party has agreed to pay or impose on and/or collect from End Users, the purchasing Party agrees to indemnify and hold harmless the providing Party for any costs incurred by the providing Party as a result of actions taken by the applicable taxing authority to collect the Tax from the providing Party due to the failure of the purchasing Party to pay or collect and remit such Tax to such authority.
- 33.7 If either Party is audited by a taxing authority or other Governmental Authority, the other Party agrees to reasonably cooperate with the Party being audited in order to respond to any audit inquiries in a proper and timely manner so that the audit and/or any resulting controversy may be resolved expeditiously.
- 33.8 To the extent a sale is claimed to be for resale and thus subject to tax exemption, the purchasing Party shall furnish the providing Party a proper resale tax exemption certificate as authorized or required by statute or regulation of the jurisdiction providing said resale tax exemption. Failure to timely provide said resale tax exemption certificate will result in no exemption being available to the purchasing Party for any period prior to the date that the purchasing Party presents a valid certificate. If Applicable Law excludes or exempts a purchase of Interconnection, Resale Services, Section 251(c)(3) Unbundled Network Elements, functions, facilities, products and services under this Agreement from a Tax, but does not also provide an exemption procedure, then the providing Party will not collect such Tax if the purchasing Party (a) furnishes the providing Party with a letter signed by an officer of the purchasing Party claiming an exemption and identifying the Applicable Law that both allows such exemption and does not require an exemption certificate; and (b) supplies the providing Party with an indemnification agreement, reasonably acceptable to the providing Party, which holds the providing Party harmless from any tax, interest, penalties, loss, cost or expense with respect to forbearing to collect such Tax.
- 33.9 With respect to any Tax or Tax controversy covered by this Section 33, the purchasing Party is entitled to contest with the imposing jurisdiction, pursuant to Applicable Law and at its own expense, any Tax that it is ultimately obligated to pay or collect. The purchasing Party will ensure that no lien is attached to any asset of the providing Party as a result of any contest. The purchasing Party shall be entitled to the benefit of any refund or recovery of amounts that it had previously paid resulting from such a contest. Amounts previously paid by the providing Party shall be refunded to the providing Party. The providing Party will cooperate in any such contest.
- 33.10 All notices, affidavits, exemption certificates or other communications required or permitted to be given by either Party to the other under this Section 34 shall be sent in accordance with Section 17 hereof.

34. NON-WAIVER

- 34.1 Except as otherwise specified in this Agreement, no waiver of any provision of this Agreement and no consent to any default under this Agreement shall be effective unless the same is in writing and properly executed by or on behalf of the Party against whom such waiver or consent is claimed. Waiver by either Party of any default by the other Party shall not be deemed a waiver of any other default. Failure of either Party to insist on performance of any term or condition of this Agreement or to exercise any right or privilege hereunder shall not be construed as a continuing or future waiver of such term, condition, right or privilege. No course of dealing or failure of any Party to strictly enforce any term,

right, or condition of this Agreement in any instance shall be construed as a general waiver or relinquishment of such term, right or condition.

35. NETWORK MAINTENANCE AND MANAGEMENT

- 35.1 The Parties will work cooperatively to implement this Agreement. The Parties will exchange appropriate information (for example, maintenance contact numbers, network information, information required to comply with law enforcement and other security agencies of the Government, escalation processes, etc.) to achieve this desired result.
- 35.2 Each Party will administer its network to ensure acceptable service levels to all users of its network services. Service levels are generally considered acceptable only when End Users are able to establish connections with little or no delay encountered in the network. Each Party will provide a 24-hour contact number for Network Traffic Management issues to the other's surveillance management center.
- 35.3 Each Party maintains the right to implement protective network traffic management controls, such as "cancel to", "call gapping" or 7-digit and 10-digit code gaps, to selectively cancel the completion of traffic over its network, including traffic destined for the other Party's network, when required to protect the public-switched network from congestion as a result of occurrences such as facility failures, switch congestion or failure or focused overload. Each Party shall immediately notify the other Party of any protective control action planned or executed.
- 35.4 Where the capability exists, originating or terminating traffic reroutes may be implemented by either Party to temporarily relieve network congestion due to facility failures or abnormal calling patterns. Reroutes shall not be used to circumvent normal trunk servicing. Expansive controls shall be used only when mutually agreed to by the Parties.
- 35.5 The Parties shall cooperate and share pre-planning information regarding cross-network call-ins expected to generate large or focused temporary increases in call volumes to prevent or mitigate the impact of these events on the public-switched network, including any disruption or loss of service to the other Party's End Users. Facsimile (FAX) numbers must be exchanged by the Parties to facilitate event notifications for planned mass calling events.
- 35.6 Neither Party shall use any Interconnection, Resale Service, Section 251(c)(3) Unbundled Network Element, function, facility, product or service provided under this Agreement or any other service related thereto or used in combination therewith in any manner that interferes with or impairs service over any facilities of the other Party, its affiliated companies or other connecting telecommunications carriers, prevents any carrier from using its Telecommunications Service, impairs the quality or the privacy of Telecommunications Service to other carriers or to either Party's End Users, causes hazards to either Party's personnel or the public, damage to either Party's or any connecting carrier's facilities or equipment, including any malfunction of ordering or billing systems or equipment. Upon such occurrence either Party may discontinue or refuse service, but only for so long as the other Party is violating this provision. Upon any such violation, either Party shall provide the other Party notice of the violation at the earliest practicable time.

36. SIGNALING

- 36.1 SBC WISCONSIN will provide SS7 signaling pursuant to applicable access tariff.

37. CUSTOMER INQUIRIES

- 37.1 Except as otherwise required by Section 24.1, each Party will refer all questions regarding the other Party's services or products directly to the other Party at a telephone number specified by that Party.
- 37.2 Except as otherwise required by Section 24.1, each Party will ensure that all of its representatives who receive inquiries regarding the other Party's services:

- 37.2.1 Provide the number described in Section 37.1 to callers who inquire about the other Party's services or products; and
- 37.2.2 Do not in any way disparage or discriminate against the other Party or its products or services.
- 37.3 Except as otherwise provided in this Agreement, CLEC shall be the primary point of contact for CLEC's End Users with respect to the services CLEC provides such End Users.
- 37.4 CLEC acknowledges that **SBC WISCONSIN** may, upon End User request, provide services directly to such End User similar to those offered to CLEC under this Agreement.

38. EXPENSES

- 38.1 Except as expressly set forth in this Agreement, each Party will be solely responsible for its own expenses involved in all activities related to the matters covered by this Agreement.
- 38.2 **SBC WISCONSIN** and CLEC shall each be responsible for one-half (1/2) of expenses payable to a Third Party for Commission fees or other charges (including regulatory fees, reproduction and delivery expense and any costs of notice or publication, but not including attorney's fees) associated with the filing of this Agreement or any amendment to this Agreement.

39. CONFLICT OF INTEREST

- 39.1 The Parties represent that no employee or agent of either Party has been or will be employed, retained, paid a fee, or otherwise received or will receive any personal compensation or consideration from the other Party, or any of the other Party's employees or agents in connection with the negotiation of this Agreement or any associated documents.

40. SURVIVAL

- 40.1 The Parties' obligations under this Agreement which by their nature are intended to continue beyond the termination or expiration of this Agreement shall survive the termination or expiration of this Agreement. Without limiting the general applicability of the foregoing, the following terms and conditions of the General Terms and Conditions are specifically agreed by the Parties to continue beyond the termination or expiration of this Agreement: Section 5.5; Section 5.6; Section 7.3; Section 8.1; Section 8.4; Section 8.5; Section 8.6; Section 8.7; Section 8.8; Section 10; Section 11; Section 13; Section 14; Section 15; Section 16.1; Section 18; Section 19; Section 20; Section 22; Section 25.4; Section 26.1.3; Section 32; Section 34 and Section 42.

41. SCOPE OF AGREEMENT

- 41.1 This Agreement is intended to describe and enable specific Interconnection and compensation arrangements between the Parties. This Agreement is the arrangement under which the Parties may purchase from each other the products and services described in Section 251 of the Act and obtain approval of such arrangement under Section 252 of the Act. Except as agreed upon in writing, neither Party shall be required to provide the other Party a function, facility, product, service or arrangement described in the Act that is not expressly provided herein.
- 41.2 Except as specifically contained herein or provided by the FCC or any Commission within its Section 251(c)(3) jurisdiction, nothing in this Agreement shall be deemed to affect any access charge arrangement.

42. AMENDMENTS AND MODIFICATIONS

- 42.1 Except as otherwise provided for in this Agreement, no provision of this Agreement shall be deemed amended or modified by either Party unless such an amendment or modification is in writing, dated, and signed by an authorized representative of both Parties. The rates, terms and conditions contained in the amendment shall become effective upon approval of such amendment by the appropriate Commissions; and such amendment will not require refunds, true-up or retroactive crediting or debiting

prior to the approval of the Amendment. **SBC WISCONSIN** and CLEC shall each be responsible for its share of the publication expense (i.e. filing fees, delivery and reproduction expense, and newspaper notification fees), to the extent publication is required for filing of an amendment by a specific state.

- 42.2 Neither Party shall be bound by any preprinted terms additional to or different from those in this Agreement that may appear subsequently in the other Party's form documents, purchase orders, quotations, acknowledgments, invoices or other communications.

43. APPENDICES INCORPORATED BY REFERENCE

43.1 ACCESS TO RIGHTS-OF-WAY -- SECTION 251(b)(4)

43.1.1 **SBC WISCONSIN** shall provide to CLEC access to Poles, Conduits and Rights of Ways pursuant to the applicable Appendix Structure Access, which is/are attached hereto and incorporated herein by reference.

43.2 COLLOCATION -- SECTION 251(c)(6)

43.2.1 Collocation will be provided pursuant to the applicable Appendix Collocation, which is attached hereto and incorporated herein by reference.

43.3 DIALING PARITY -- Section 251(b)(3)

43.3.1 The Parties shall provide Local Dialing Parity to each other as required under Section 251(b)(3) of the Act.

43.3.2 **SBC WISCONSIN** shall provide IntraLATA Dialing Parity in accordance with Section 271(e)(2) of the Act.

43.4 INTERCONNECTION PURSUANT TO SECTION 251(c)(2)(A),(B),(C); 47 CFR § 51.305(a)(1)

43.4.1 **SBC WISCONSIN** shall provide to CLEC Interconnection of the Parties' facilities and equipment for the transmission and routing of Telephone Exchange Service traffic and Exchange Access traffic pursuant to the applicable Appendix ITR, which is/are attached hereto and incorporated herein by reference. Methods for Interconnection and Physical Architecture shall be as defined in the applicable Appendix NIM, which is/are attached hereto and incorporated herein by reference.

43.5 NUMBER PORTABILITY -- SECTIONS 251(b)(2)

43.5.1 The Parties shall provide to each other Permanent Number Portability (**PNP**) on a reciprocal basis as outlined in the applicable Appendix Number Portability, which is/are attached hereto and incorporated herein by reference.

43.6 OTHER SERVICES

43.6.1 911 and E911 Services

43.6.1.1 **SBC WISCONSIN** will make nondiscriminatory access to 911 and E911 services available under the terms and conditions of the applicable Appendix 911, which is/are attached hereto and incorporated herein by reference.

43.6.1.2 The Parties agree that for "data only" providers the following rules concerning 911 requirements apply:

43.6.1.2.1 The Parties agree that CLEC will not have to establish 911 trunking or interconnection to Ameritech's 911 Selective Routers, and therefore **SBC WISCONSIN** shall not provide 911 services for those information service applications in which CLEC does not offer its end users the ability to place outgoing voice calls provided that; and

43.6.1.2.2 CLEC understands and agrees that, should it decide to provide voice service, it is required to meet all applicable Commission 911 service requirements; and

43.6.1.2.3 CLEC agrees to begin implementing access to 911 sufficiently in advance of the planned implementation of voice service to meet its 911 requirements. CLEC understands that the steps it must take to fulfill its 911 obligation include, but are not limited to, obtaining NXX(s) from NECA for the exchange area(s) CLEC plans to serve, submission of the appropriate form(s) to **SBC WISCONSIN**, and, following **SBC WISCONSIN**'s processing of such form(s), obtaining approval from the appropriate PSAP(s) for the CLEC's 911 service architecture. CLEC further understands that PSAP approval may include testing 911 trunks with appropriate PSAP(s). CLEC understands that, based on **SBC WISCONSIN**'s prior experience with CLEC implementation of 911, these steps require a minimum of sixty (60) days.

43.6.1.2.4 CLEC agrees to indemnify and hold **SBC WISCONSIN** harmless from the consequences of CLEC's decision to not interconnect with **SBC WISCONSIN**'s 911 Selective Routers. The provisions of General Terms and Conditions Section 14 shall apply to such indemnification.

43.6.3 Directory Assistance (DA)

43.6.3.1 **SBC WISCONSIN** will provide nondiscriminatory access to Directory Assistance services under the terms and conditions identified in the applicable Appendix DA, which **is/are** attached hereto and incorporated herein by reference.

43.6.4 Intentionally Left Blank

43.6.5 Operator Services (OS)

44.6.5.1 **SBC WISCONSIN** shall provide nondiscriminatory access to Operator Services under the terms and conditions identified in the applicable Appendix OS, which **is/are** attached hereto and incorporated herein by reference.

43.6.6 Publishing and Directory

43.6.6.1 **SBC WISCONSIN** will make nondiscriminatory access to Publishing and Directory service available under the terms and conditions of the applicable Appendix White Pages, which **is/are** attached hereto and incorporated herein by reference.

43.6.7 RESALE--SECTIONS 251(b)(1)

43.6.7.1 **SBC WISCONSIN** shall provide to CLEC Telecommunications Services for resale at wholesale rates pursuant to the applicable Appendix Resale, which **is/are** attached hereto and incorporated herein by reference.

43.6.8 TRANSMISSION AND ROUTING OF SWITCHED ACCESS TRAFFIC PURSUANT TO 251(c)(2)

43.6.8.1 **SBC WISCONSIN** shall provide to CLEC certain trunk groups (Meet Point Trunks) under certain parameters pursuant to the applicable Appendix ITR, which **is/are** attached hereto and incorporated herein by reference.

43.6.9 TRANSMISSION AND ROUTING OF TELEPHONE EXCHANGE SERVICE TRAFFIC PURSUANT TO SECTION 251(c)(2)(D); 252(d)(1) and (2); 47 CFR § 51.305(a)(5).

43.6.9.1 The applicable Appendix Intercarrier Compensation, which **is/are** attached hereto and incorporated herein by reference, prescribe traffic routing parameters for Local Interconnection Trunk Group(s) the Parties shall establish over the Interconnections specified in the applicable Appendix ITR, which **is/are** attached hereto and incorporated herein by reference.

43.6.10 SECTION 251(C)(3) UNBUNDLED NETWORK ELEMENTS -- SECTIONS 251(c)(3)

43.6.10.1 Pursuant to the applicable Appendix Section 251(c)(3) UNEs, which **is/are** attached hereto and incorporated herein by reference, **SBC WISCONSIN** will provide CLEC access to Section 251(c)(3) UNEs for the provision of Telecommunications Service as required by Sections 251 and 252 of the Act and in the Appendices hereto. CLEC agrees to provide access to its Network Elements to **SBC WISCONSIN** under the same terms, conditions and prices contained herein and in the applicable Appendices hereto.

44. AUTHORITY

- 44.1 Each of the SBC-owned ILEC(s) for which this Agreement is executed represents and warrants that it is a corporation or limited partnership duly organized, validly existing and in good standing under the laws of its state of incorporation or formation. Each of the SBC-owned ILEC(s) for which this Agreement is executed represents and warrants that SBC Operations, Inc. has full power and authority to execute and deliver this Agreement as agent for that SBC-owned ILEC. Each of the SBC-owned ILEC(s) for which this Agreement is executed represents and warrants that it has full power and authority to perform its obligations hereunder.
- 44.2 CLEC represents and warrants that it is a corporation duly organized, validly existing and in good standing under the laws of the State of Wisconsin and has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder. CLEC represents and warrants that it has been or will be certified as a LEC by the Commission(s) prior to submitting any orders hereunder and is or will be authorized to provide the Telecommunications Services contemplated hereunder in the territory contemplated hereunder prior to submission of orders for such Service.
- 44.3 Each Person whose signature appears below represents and warrants that he or she has authority to bind the Party on whose behalf he or she has executed this Agreement.

45. COUNTERPARTS

- 45.1 This Agreement may be executed in counterparts. Each counterpart shall be considered an original and such counterparts shall together constitute one and the same instrument.

46. ENTIRE AGREEMENT**46.1 SBC WISCONSIN**

46.1.1 The terms contained in this Agreement and any Appendices, Attachments, Exhibits, Schedules, and Addenda constitute the entire agreement between the Parties with respect to the subject matter hereof, superseding all prior understandings, proposals and other communications, oral or written between the Parties during the negotiations of this Agreement and through the execution and/or Effective Date of this Agreement. This Agreement shall not operate as or constitute a novation of any agreement or contract between the Parties that predates the execution and/or Effective Date of this Agreement.

SBC WISCONSIN Agreement
Signatures

**THIS AGREEMENT CONTAINS A BINDING
ARBITRATION PROVISION WHICH MAY BE
ENFORCED BY THE PARTIES.**

CLEC's STATE-SPECIFIC:

FACILITIES-BASED OCN # 4855

RESALE OCN #

ACNA WSW

24-7 Telcom, Inc.

**Wisconsin Bell, Inc. d/b/a SBC Wisconsin by SBC
Operations, Inc., its authorized agent**

Signature: _____

Signature: _____

Name: _____
(Print or Type)

Name: _____
(Print or Type)

Title: _____
(Print or Type)

Title: AVP-Local Interconnection Marketing

Date: _____

Date: _____